

1 CAUSE NO. F07-50318-M
2 THE STATE OF TEXAS * IN THE DISTRICT COURT
3 vs. * 194TH JUDICIAL DISTRICT
4 WESLEY LYNN RUIZ * DALLAS COUNTY, TEXAS
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9 REPORTER'S RECORD
10 VOIR DIRE EXAMINATION
11 Volume 22 of 59 Volume(s)
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19 BE IT REMEMBERED THAT on this the 13th day of
20 February, A.D., 2008, the above-styled and -numbered cause(s)
21 came on for hearing before the HONORABLE ERNEST B. WHITE, III
22 of the 194th Judicial District Court of Dallas County, State
23 of Texas, the following is a true and correct transcription of
24 the proceedings had, to-wit:
25 (Proceedings Reported by Computerized Machine Shorthand)

*Belinda G. Baraka, Official Court Reporter
214-653-5803*

A P P E A R A N C E S

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HON. ANDREA HANDLEY
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FOR THE STATE OF TEXAS

10 HON. PAUL BRAUCHLE
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FOR THE DEFENDANT

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*Belinda G. Baraka, Official Court Reporter
214-653-5803*

1 MR. BEACH: Okay. I can guarantee you that none
 2 of the seven folks that have already been put on this jury
 3 volunteered, okay. You understand?

4 PROSPECTIVE JUROR: Uh-huh.

5 MR. BEACH: Especially what is at stake in this
 6 case. Nobody is going home, skipping home saying I got
 7 selected, I got selected. But each of the seven folks did
 8 assure both the State and the Defense in this case that if
 9 they were selected, they could devote their full energy,
 10 concentration, attention, just all their efforts to try to go
 11 do the right thing based on the evidence in this case. And
 12 are you telling me that you could do that?

13 PROSPECTIVE JUROR: I would make every effort,
 14 yes.

15 MR. BEACH: The only -- when I told you five to
 16 eight days, the only thing we can't predict is how long a jury
 17 might deliberate. A jury might deliberate for ten minutes or
 18 two days, that's the only x-factor.

19 And one more thing, there is the possibility that once
 20 the evidence is actually completed that the jury may be
 21 sequestered, okay. And that would mean that you would go to a
 22 hotel with 11 other jurors. And you would not be allowed to
 23 have contact with the outside world.

24 Would you be able to do that for a night or two without
 25 any problem?

1 PROSPECTIVE JUROR: Yes.

2 MR. BEACH: Okay. All right. Let me just talk
 3 to you a little bit about, you know, try to put some meat on
 4 some of these answers that are on this cold piece of paper.

5 PROSPECTIVE JUROR: Okay.

6 MR. BEACH: We asked you there on page one how
 7 you felt about the death penalty. Your answer was, Should a
 8 person murder someone with full intent to kill them, not
 9 self-defense, and when you say there, it could be proven, so
 10 basically what is important to you, ma'am, is full intent, it
 11 is not an accident, it is not self-defense. We are not
 12 talking about some insane person?

13 PROSPECTIVE JUROR: Huh-uh.

14 MR. BEACH: We are talking about meant to do it,
 15 wanted to do it, got it done and no justification, no excuse,
 16 in those circumstances, you believe the death penalty could be
 17 an appropriate punishment?

18 PROSPECTIVE JUROR: Yes, it could be.

19 MR. BEACH: Judge, I think we have an agreement.
 20 I appreciate you coming down. We have talked to the
 21 lawyers, we have an agreement and we are going to let you go.

22 PROSPECTIVE JUROR: Okay.

23 THE COURT: Thank you, Ms. Jones.

24 (Prospective juror retired from the courtroom.)

25 (Pause in the proceedings.)

11 1 (Prospective juror entered the courtroom.)
 2 THE COURT: You may be seated.

3 Good morning, Ms. Molinar.

4 PROSPECTIVE JUROR: Good morning.
 5 THE COURT: You were brought down here today
 6 because the lawyers have some questions to ask you about your
 7 qualifications as juror in this matter. There aren't any
 8 right or wrong answers, they merely attempt to see how you
 9 feel about certain issues.

10 And will you be doing for the State?

11 MS. HANDLEY: Yes, Your Honor.

12 THE COURT: You may proceed.

13 MS. HANDLEY: May it please the Court?

14 ORLIDIA MOLINAR

15 was called as a prospective juror, after having been
 16 previously sworn by the Court, testified under oath as
 17 follows:

18 VOIR DIRE EXAMINATION

19 BY MS. HANDLEY:

20 Good morning, Ms. Molinar. My name is Andrea Handley.
 21 And seated to my right is Marshal McCallum and Andy Beach. We
 22 are Assistant District Attorneys.

23 And seated to my left is Paul Brauchle and Karo Johnson.
 24 They are defense attorneys here in town. And they represent
 25 the man seated at the end of the table, Wesley Ruiz. And we

12 1 have called you down here to see whether or not you should be
 2 seated as a juror in this death-penalty case.

3 Have you had an opportunity to look over your
 4 questionnaire again?

5 PROSPECTIVE JUROR: Yes, ma'am.

6 MS. HANDLEY: You filled that out about two
 7 months ago. And probably at this time you were put on the
 8 spot and did the best you could to fill it out in that jury
 9 room. And having had an opportunity to look at it again,
 10 would you change anything or add anything to it?

11 PROSPECTIVE JUROR: Well, I didn't quite go over
 12 all of it. But what little I did.

13 MS. HANDLEY: Okay. Let me tell you what is
 14 going on, Ms. Molinar, and I am sure you already have a good
 15 appreciation for how serious this case is and what we are
 16 doing here is, we are trying to seat 12 people to sit in this
 17 particular case. And this is a death-penalty case. We had

18 y'all come down here and fill out these questionnaires just so
 19 we could get kind of a feeling about your feelings about the
 20 death penalty and such as that. And we are bringing people in
 21 individually to talk to you some more to kind of flesh that
 22 out.

23 You will know today, Ms. Molinar, whether or not you are
 24 going to sit on this particular jury. And so what becomes
 25 important, very important for both sides and all parties here

1 is that you just be frank with us and honest with us. Because
 2 what we both really need are 12 individuals that can give us
 3 their full concentration, attention and energy to this
 4 particular case. So before I talk to you about maybe the
 5 specifics of a death-penalty case, the obligations of a jury,
 6 I want to kind of flesh out if you can do that. If there is
 7 not maybe something else that might be distracting you from
 8 sitting as a juror in this death-penalty case.

9 I see you are already looking like you are pausing.

10 PROSPECTIVE JUROR: Okay, I am just thinking,
 11 okay, I already have some vacation planned and paid for.

12 MS. HANDLEY: Tell me about that, when is your
 13 vacation, what times are you looking at?

14 PROSPECTIVE JUROR: April, I think it is the
 15 11th.

16 MS. HANDLEY: Okay. So on April the 11th you
 17 have tickets paid for?

18 PROSPECTIVE JUROR: Paid for.

19 MS. HANDLEY: Good to go. I think you are going
 20 to be heading off on vacation right when we start the trial.

21 PROSPECTIVE JUROR: It is already paid for.

22 MS. HANDLEY: Thank you for your time, ma'am,
 23 have a good time.

24 PROSPECTIVE JUROR: Thank you.

25 (Prospective juror retired from the courtroom.)

1 (Pause in the proceedings.)
 2 (Prospective juror entered the courtroom.)
 3 THE COURT: You may be seated.
 4 Good morning, Ms. Lemond?

5 PROSPECTIVE JUROR: Good morning.
 6 THE COURT: How are you today?

7 PROSPECTIVE JUROR: Fine.

8 THE COURT: The attorneys have some questions to
 9 ask you concerning your qualifications as a juror in this
 10 case.

11 What says the State?

12 MR. MCCALLUM: May it please Court?

13 SUSAN LEMOND

14 was called as a prospective juror, after having been
 15 previously sworn by the Court, testified under oath as
 16 follows:

17 VOIR DIRE EXAMINATION

18 BY MR. MCCALLUM:

19 Good morning, Ms. Lemond. My name is Marshall McCallum.
 20 I am an Assistant District Attorney here in Dallas County.
 21 Seated to my left is Andrea Handley. We are both D.A.s. We
 22 are responsible for selecting the jury in this capital murder
 23 case. There is another gentleman by the name of Kevin Brooks
 24 who will be responsible for handling the evidence.
 25 Seated over here to my left, is Karo Johnson.

15

16

1 MR. JOHNSON: Good afternoon.
 2 MR. MCCALLUM: And Paul Brauchle. They are
 3 attorneys here in Dallas; and they represent the man accused
 4 in this case, Wesley Ruiz. You don't know any of us?
 5 PROSPECTIVE JUROR: No, sir.
 6 MR. MCCALLUM: You remember coming down here
 7 November 30th and filling out this extensive questionnaire?
 8 We asked you just about every opinion you had and your life
 9 history and all of that. Have you had a chance to look over
 10 that today?

11 PROSPECTIVE JUROR: Yes, I have.

12 MR. MCCALLUM: Anything that has changed since
 13 you filled it out?

14 PROSPECTIVE JUROR: Yes.

15 MR. MCCALLUM: What would that be?

16 PROSPECTIVE JUROR: Well, it said just basically
 17 the question about do I have any reasons why I could not say
 18 whether or not someone should have the death penalty or not.
 19 I think that that would be difficult for me to -- to say the
 20 fate of someone else's life basically is what I am trying to
 21 say.

22 MR. MCCALLUM: Okay. Ms. Handley uses a great
 23 analogy and it is good for me too. She and I both hate
 24 heights. And if you asked us about window washing on these
 25 high-rise buildings, I am all for it. I think it is great

1 that people get out there and wash windows on buildings. But
 2 if you asked me to do it, I am about the last person you want
 3 to get up there. I will do it if I am told to do it. But
 4 when I get up there to actually have to do the task of washing
 5 windows 40 stories up in the air, I can tell you about the
 6 last thing on my mind is doing a good job and focusing on that
 7 job. I am going to be worried about getting down and not
 8 fall.

9 Do you feel like that applies to you?

10 PROSPECTIVE JUROR: Yes, I do.

11 MR. MCCALLUM: And you feel like it would be
 12 difficult and you don't think you could sit and concentrate on
 13 the task at hand; is that a fair statement?

14 PROSPECTIVE JUROR: I would probably have to
 15 concentrate on it, yes.

16 MR. MCCALLUM: I am going to tell you, it is our
 17 goal in this case to seek the death penalty. We believe that
 18 we have the quality and the type of evidence that, first, is
 19 going to convince 12 jurors that he is guilty, the man at the
 20 end of the table is guilty of capital murder. And, secondly
 21 that a death penalty as opposed to life imprisonment is the
 22 proper sentence, that's what we are going for here. I know
 23 the -- that's our opinion. The Defense has a completely
 24 different view. They think -- you know completely opposite.
 25 But we believe that is the type of evidence we have. And it

1 is our goal that at one day that that man seated at the end of
 2 the table is going to be laying dead on a gurney. And my
 3 question to you, ma'am, do you feel like you are the type of
 4 person that can participate in a process that might one day in
 5 the future result in that man laying dead on a gurney?

6 PROSPECTIVE JUROR: Is that a yes/no, question?

7 MR. MCCALLUM: Well, we can't really have maybe,
 8 we really at this point -- I mean we are going to start this
 9 trial probably in early April. And you know we want to
 10 impress upon everybody just how serious we are, and you know
 11 yourself better than we do. And we really need to know if you
 12 can take part in a process like that. There is no right or
 13 wrong answers?

14 PROSPECTIVE JUROR: I think it would be really
 15 difficult for me. So I guess my answer would be, no.

16 MR. MCCALLUM: Judge, we have an agreement.
 17 Thank you, Ms. Lemond.

18 THE COURT: Thank you, you are free to go.

19 (Prospective juror retired from the courtroom.)

20 (Recess taken.)

21 (Lunch recess taken.)

22 (Prospective juror entered the courtroom.)

23 THE COURT: You may be seated.

24 Good afternoon, Mr. Caldwell. How are you, sir?

25 PROSPECTIVE JUROR: Well, thank you.

1 THE COURT: The attorneys for both sides have
 2 some questions to ask you about our qualifications as a juror
 3 in this case. There aren't any right or wrong answers.
 4 They are just trying to see what your feelings are on certain
 5 issues.

6 Who will be conducting -- Mr. Beach will be conducting
 7 the voir dire for State.

8 You may proceed, Mr. Breach.

9 MR. BEACH: May it please the Court?

10 BRADLEY CALDWELL

11 was called as a witness, and having been duly sworn by the
 12 Court, testified under oath as follows:

13 DIRECT EXAMINATION

14 BY MR. CALDWELL:

15 Mr. Caldwell, my name is Andy Beach, along with Andrea
 16 Handley, along with Marshall McCallum, we are selecting the
 17 jury phase of this capital murder trial for the State of
 18 Texas.

19 To my left is Karo Johnson and Paul Brauchle. They are
 20 attorneys here in town, and they have the responsibility of
 21 representing defendant in this case. He is the man at the end
 22 of the counsel table. That's Wesley Ruiz.

23 It has been over two months since you came down and
 24 filled out that questionnaire. I know you slept since then
 25 and Christmas and New Year's and Superbowl. Penn State played

19 in a bowl came this year.

2 PROSPECTIVE JUROR: If you want to -- it was
 3 below our standards. Not to offend any Aggies in here.

4 MR. BEACH: A lot of things have happened since
 5 you filled this out. You had a chance to review it. Anything
 6 that you would change now on your questionnaire if given the
 7 opportunity?

8 PROSPECTIVE JUROR: Not materially. I do know I
 9 made an error. On one part referring to my wife's birthday,
 10 it is corrected. I forgot my wife's birthday.

11 MR. BEACH: You know what tomorrow is?

12 PROSPECTIVE JUROR: What, Valentine's Day?

13 MR. BEACH: Yeah. You are -- let's see, an
 14 accountant for AAFS, anything about your job situation -- let
 15 me stop and back up. We anticipate this case is actually --
 16 the trial itself is going to start probably the first or
 17 second week of April. Okay. We have been going at this jury
 18 selection process now for about four weeks, we have a grand
 19 total of seven jurors. We need five more, probably a couple
 20 of alternates. So it is a lengthy process. So once we start
 21 the first or second week of April, we anticipate at that point
 22 in time probably a five-to-eight day trial. Okay. The only
 23 thing we cannot predict is how long a jury deliberates. But
 24 in terms of the evidence itself, five to eight working days.
 25 Anything about those perimeters that would keep you from being

20 able to come down here and devote your full attention to your
 1 jury service?

3 PROSPECTIVE JUROR: No, sir.

4 MR. BEACH: Have you ever felt differently about
 5 the death penalty in your adult life, sir?

6 PROSPECTIVE JUROR: I have always consistently
 7 thought that I have been a proponent for the death-penalty.

8 MR. BEACH: Let me just ask you this, why do you
 9 think we need a death penalty?

10 PROSPECTIVE JUROR: It is a deterrence if
 11 nothing else.

12 MR. BEACH: And you know, I read so many of
 13 these questionnaires, I don't want to make a mistake here.
 14 And your wife feels about the same?

15 PROSPECTIVE JUROR: I have never discussed it
 16 with her in 15 years of marriage to be honest.

17 MR. BEACH: And after you filled out your
 18 questionnaire, you didn't go home and talk to her, kind of
 19 about what you might be doing?

20 PROSPECTIVE JUROR: She does not know about this
 21 case and my involvement so far.

22 MR. BEACH: On page three of your questionnaire,
 23 you indicated that you remember something about just the
 24 outline of the case in the newspapers; is that correct?

25 PROSPECTIVE JUROR: Yes.

1 MR. BEACH: What do you remember again, given
 2 this happens almost a year ago, any details come to mind about
 3 what you remember from reading in this case in the newspapers?

4 PROSPECTIVE JUROR: Yes, the news reels on it.
 5 MR. BEACH: You saw it on TV as well?

6 PROSPECTIVE JUROR: Yes. Saw it in the
 7 newspapers the next day.

8 MR. BEACH: I know what a news reel is, some of
 9 these younger folks don't know what a news reel is?

10 PROSPECTIVE JUROR: Well, what I remember
 11 specifically is, being on the news, they showed the cars, I
 12 guess it was from a helicopter view, face-to-face.

13 MR. BEACH: Anything -- a lot of people have
 14 come down and said, yeah, I remember seeing something on TV
 15 about it. Reading something in the newspapers. And that does
 16 not disqualify them from being a juror in this case. What
 17 would disqualify them is if you told us right now that based
 18 on what you saw on TV or read in the newspapers, you have
 19 already formed an opinion as to the guilt or innocence of the
 20 defendant in this case. That would disqualify you if that was
 21 the case?

22 PROSPECTIVE JUROR: I understand.

23 MR. BEACH: As you sit here right now, have you
 24 formed any kind of opinion about the case?

25 PROSPECTIVE JUROR: I have not.

1 MR. BEACH: Very good.
 2 Let me see if there is anything else in here, just
 3 preliminarily. You were called for jury duty two years ago;
 4 is that right?

5 PROSPECTIVE JUROR: Yes.
 6 MR. BEACH: But did not end up on a jury?
 7 PROSPECTIVE JUROR: Did not.
 8 MR. BEACH: Okay. You have lived in this area
 9 about 17 years. Did you go -- you went to undergrad at Penn
 10 State?

11 PROSPECTIVE JUROR: Yes.
 12 MR. BEACH: Any graduate work?
 13 PROSPECTIVE JUROR: No. Haven't been in school
 14 since.

15 MR. BEACH: I went to the University of
 16 Illinois. Back when we were in school, Penn State wasn't part
 17 of the Big Ten, that is kind of a recent deal.

18 PROSPECTIVE JUROR: Right.
 19 MR. BEACH: Who was the quarterback when you
 20 were undergrad?

21 PROSPECTIVE JUROR: Blackledge. You remember
 22 him?

23 MR. BEACH: He has had a pretty the good career
 24 broadcasting?

25 PROSPECTIVE JUROR: Uh-huh, he is pretty good.

23

1 MR. BEACH: Since you have not been on a jury,
 2 at least here in Dallas, there are a lot of similarities to
 3 every criminal case. And if you recall or not, Judge White
 4 kind of gave you just a thumbnail sketch of how a criminal
 5 trial works back in late November, early December whenever you
 6 were down here. Because of what is at stake in this case,
 7 there are some things you need -- a capital murder case where
 8 the State is seeking the death penalty, we are going to talk
 9 about those in just a second.

10 But with everyone who has been up there in that chair, we
 11 have put our cards out on the table. We don't want it to come
 12 as a surprise if you are asked to be on this jury. Come
 13 April, hey, those guys were really serious about seeking the
 14 death penalty in this case. That's our goal in this case.

15 And we tell each prospective juror like yourself, that is
 16 our goal because we believe that we have the type and quality
 17 of evidence, first of all, that will convince a jury beyond
 18 any reasonable doubt that this defendant is guilty of capital
 19 murder. And secondly, that we have the type and quality of
 20 evidence that will convince a jury that a death penalty is the
 21 appropriate punishment in this case for this crime and for
 22 this individual as opposed to the only other punishment
 23 alternative available once you are found guilty of capital
 24 murder. And that's life imprisonment without the possibility of
 25 parole.

1 And let's just assume that that happens in this case,
 2 sir. You may or may not be familiar with what happens with
 3 the defendant once he is given the death penalty here in
 4 Texas. But what happens is, if the jury recommends the death
 5 penalty to Judge White, he has no discretion under the law
 6 other than to assess his punishment at death by lethal
 7 injection. At some date in the future, Judge White will set
 8 an execution date.

9 And on the day before that date, they will come and get
 10 Mr. Ruiz at the death-row facility in Livingston, Texas. Take
 11 him by vehicle to about 40 miles to downtown Huntsville,
 12 Texas. It is an old prison unit called the Walls right there
 13 in downtown. That's where the actual death chamber is. He
 14 will be placed in a holding cell. On the date of the actual
 15 execution, he will be given a last meal, allowed to see his
 16 family, a spiritual adviser, if he wanted to.

17 At six o'clock this night, they will come and get
 18 Mr. Ruiz and take him down a narrow hallway into the death
 19 chamber. Inside the room is a hospital bed, it is called a
 20 gurney, it is called a hospital bed. They put him on the
 21 gurney, insert intravenous lines into his arms. Once that
 22 process is completed two curtains would be drawn back. Behind
 23 one window, he can have up to five members of his family
 24 there. Behind the other window, the victim could have up to
 25 five members of the victim's family there. And they would be

24

1 allowed to actually witness the execution. The warden would
 2 ask Mr. Ruiz, if he wanted to make a final statement.
 3 Once that was over, the warden would give the go-ahead.
 4 And at that time a series of three drugs would begin to be
 5 introduced through those I.V. lines into his body. The first
 6 to knock him out. The second to collapse his lungs. And the
 7 third to stop his heart. Whether it took three minutes, five
 8 minutes, or seven minutes, at some point in time the doctor
 9 there would go over and pronounce Wesley Ruiz dead by that
 10 lethal injection.

11 I don't tell you that to be morbid. We tell everyone
 12 sitting up there because we want to impress upon them in this
 13 sterile courtroom what is at stake in this case, literally a
 14 life-and-death situation. Some jurors when they fill out the
 15 questionnaires when asked theoretically about it,
 16 hypothetically about it, yeah, I could give the death penalty.
 17 But when they are sitting in that chair and within 25 or
 18 30 feet not some fictional character but the man we are
 19 seeking to have the death penalty imposed upon, they say it is
 20 a different deal. They say I can't do it.

21 My question to you is sir, you know yourself better than
 22 anybody else, you have had over two months to think through
 23 issues that are going to be important in this case, do you
 24 believe that you are the type of individual that can
 25 participate in a proceeding, if you felt the evidence

1 compelled you to do so that may very well result at some date
 2 in the future this man here in the courtroom laying dead on a
 3 gurney in Huntsville Texas?

4 PROSPECTIVE JUROR: Yes, I do.
 5 MR. BEACH: Any question in your mind about
 6 that?

7 PROSPECTIVE JUROR: No.
 8 MR. BEACH: I will tell you something.
 9 Mr. Caldwell, the seven jurors who have already been impaneled
 10 on this case, we didn't get any volunteered, okay. We didn't
 11 get anybody going to be skipping home, I am going to be on
 12 this jury. Everybody is going to take it seriously, nobody is
 13 going to relish this experience. They have all told us that
 14 it is going to be a memory they will have the rest of their
 15 lives. Because again it may very well come to pass at some
 16 point in the future you turn on the TV at six o'clock, there
 17 it is, they are taking Wesley Ruiz down that hallway to the
 18 death chamber. This is potentially a very real experience.

19 Each juror that has been impaneled, they have expressed
 20 to us that they will take it seriously, and I know you will do
 21 so.

22 Let's talk about what a potential death-penalty murder
 23 case is here in Texas. And what is not a potential
 24 death-penalty murder case. Some folks think for instance if I
 25 pulled out a gun right now, pointed it to her head and blew

27

28

1 her brains out and danced around her dead body and laughed
 2 about it, that would be a horrific murder; wouldn't you agree?
 3 PROSPECTIVE JUROR: Yes.
 4 MR. BEACH: Guess what, in Texas I would not be
 5 subjected possibly to the death penalty because she is not one
 6 of the protected class of individuals. The legislature here
 7 in Texas says if you kill a member of that class, potentially
 8 you could be subjected to the death penalty.

9 Now, if she was in uniform like that fellow back there,
 10 if she was a peace officer acting in the line of duty, and I
 11 intentionally committed the murder of that individual, like we
 12 have here in this case, allegedly, that is a potential death
 13 penalty case.

14 If you go into a 7-Eleven store to rob it and you murder
 15 the clerk behind the counter, murder during a robbery, that
 16 would elevate what I will just call first degree murder up to
 17 capital murder where the death penalty would be potential
 18 punishment, okay.

19 Murder during a rape. Murder when you are breaking into
 20 somebody's home, you murder the home owner during the
 21 burglary. Murder during kidnapping. You kill two or more
 22 individuals in the same criminal transaction. Multiple
 23 murders in one transaction. Serial killers, you know Ted
 24 Bundy, those kinds of folks that murder pursuant to the same
 25 scheme all across the country. Murder for hire.

1 If I hire Andrea to go out and kill someone, I would be
 2 subjected to the death penalty for hiring her. And she could
 3 be subjected to the death penalty for actually receiving money
 4 and committing the murder. Other than those categories, those
 5 are the only fact situations where the State could seek the
 6 death penalty.

7 Are you with me so far?

8 PROSPECTIVE JUROR: Yes.
 9 MR. BEACH: Some folks have told us that if I
 10 were Governor Caldwell for the day and I could either expand
 11 the categories of the crime where the death penalty would be a
 12 possibility, or decrease that category, we got lots of
 13 different answers, okay. And that's fine to have personal
 14 opinions. But could you follow the law in regards to the way
 15 it is here in Texas, what a death-penalty case potentially is
 16 and what a death-penalty case potentially is not?

17 PROSPECTIVE JUROR: Yes, I could.
 18 MR. BEACH: What we have to prove in this case,
 19 on that half page piece of paper right there in front of you.
 20 While you are looking at that, let me just paraphrase. We
 21 have to prove beyond a reasonable doubt that this defendant
 22 here, in Dallas County, Texas, on or about a certain date,
 23 knowingly and intentionally caused the death of that police
 24 officer by shooting him with a firearm. And when he committed
 25 that murder, he knew that police officer was acting in the

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1 line of duty. That kind of course paraphrase what we have to
2 prove in this case, okay.

3 Now, let me give you kind of an extreme example to
4 highlight a law that is going to apply in this case. Let's
5 say that at the end of all the evidence, you and 11 other
6 jurors, you have no doubt whatsoever that the defendant
7 intentionally murdered a police officer. And when he murdered
8 that police officer, he knew he was murdering a police officer
9 in the line of duty, no doubt about it. But as you see in
10 there, one of the things we have to prove is the murder
11 happened in Dallas County, Texas.

12 Now, let's say, Mr. Caldwell, that we drop the ball, we
13 being the prosecution in this case, and didn't present any
14 evidence where the murder took place. Or worse yet, the
15 evidence you heard was that the murder took place in Kaufman
16 County.

17 Now, you are going to take an oath, if you are asked to
18 be on this jury, to render your verdict -- a true verdict
19 according to the law and the evidence. And the law is, we
20 have to prove everything in that indictment beyond a
21 reasonable doubt. Not four out of five, not six out of seven,
22 we got to prove everything. And one of the things we have to
23 prove is the county where the murder took place.

24 Now, if something like that happened, it would make you
25 sick, make the other 11 jurors sick and you have to let a

1 murderer go, but their oath would require it. We would be
2 looking for a job the next day, I guarantee you if something
3 like that happened. If you were on this jury, you would have
4 to follow the law.

5 Could you follow the law in that regard?

6 PROSPECTIVE JUROR: Yes.
7 MR. BEACH: That piece of paper is part of the
8 indictment in this case. And you have heard the term
9 indictment. And literally it is a piece of paper. It tells
10 us what we have to prove beyond a reasonable doubt. It tells
11 them what they have to defend against.

12 I have been doing this off and on for 25 years. And I
13 have never met anybody that volunteered to get indicted. So
14 the corresponding obligation is, we do all the accusing, we
15 have to do all the proving, okay.

16 A lot of folks think coming into a trial, if someone has
17 been arrested, indicted, and here they are in the courtroom
18 surrounded by bailiffs and people in uniform, they must have
19 done something wrong. That's a natural thing to think. But
20 again to follow your oath in this case, you are going to have
21 to assure everybody in here. The Judge is going to instruct
22 you that the indictment is absolutely no evidence of guilt in
23 this case. It is just a piece of paper that tells us what we
24 have to prove and what they have to defend against.

25 Can you follow that law, sir?

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1 PROSPECTIVE JUROR: Yes.

2 MR. BEACH: That analogy, I just related to you
3 that where there is smoke there is fire, he must have done
4 something wrong, your mind-set needs to be the exact opposite
5 if you are to follow your oath in this case. Because as you
6 know, every criminal case starts with what, the presumption of
7 innocence. As he sits here in the courtroom right now, again
8 Judge White will instruct you that you are to presume Mr. Ruiz
9 innocent until we, the State, produces sufficient evidence
10 that convinces you beyond a reasonable doubt everything on
11 that piece of paper; you understand that?

12 PROSPECTIVE JUROR: Yes.

13 MR. BEACH: And could you give Mr. Ruiz the
14 presumption of innocence and require the State to prove
15 everything that we are required to prove beyond a reasonable
16 doubt?

17 PROSPECTIVE JUROR: Yes.

18 MR. BEACH: Now, where do we go from there, I
19 said three or four times, what is your burden in a criminal
20 case. Our burden is to prove everything we are required to by
21 law beyond a reasonable doubt, you have heard that term
22 before; is that correct?

23 PROSPECTIVE JUROR: Yes.

24 MR. BEACH: I am guessing, knowing what is at
25 stake in this case, literally life and death, you are going to

1 hold us to that burden of proof, aren't you?

2 PROSPECTIVE JUROR: Yes, I am.

3 MR. BEACH: If you have ever been on a civil
4 case before, the burden in a civil case where you are talking
5 about money or property is by a preponderance of the evidence.

6 PROSPECTIVE JUROR: Right.

7 MR. BEACH: Just the slight tipping of the scale
8 one way or the other, whoever does that prevail. You are
9 talking about a case where you are trying to get someone
10 institutionalized because they are mentally incompetent. Or a
11 case is where you are trying to terminate someone's parental
12 rights, the burden in that case is called clear and convincing
13 evidence. Above preponderance of the evidence, clearly higher
14 burden than in a civil case. Then you come to a case like
15 this in a criminal case is even higher than clear and
16 convincing evidence.

17 You understand why that burden is higher?

18 PROSPECTIVE JUROR: Yes.

19 MR. BEACH: And you would hold us to proving the
20 case beyond a reasonable doubt against Mr. Ruiz?

21 PROSPECTIVE JUROR: Yes.

22 MR. BEACH: And I have said this. I don't want
23 to repeat myself, you have to look to us for everything in
24 this case, okay.

25 The only thing they have to do under the law is to

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1 attend. They are here right now, and they are going to be
 2 here everyday of this trial.
 3 Now, these are fine lawyers. And I expect they are going
 4 to vigorously and zealously defend their client in this case
 5 like they have done for over 40 years -- 30 years -- 20 --
 6 they have been around a long time. They are going to do what
 7 they have to do. They don't have to. They can sit over there
 8 and do crossword puzzles under the law. You don't look to
 9 them for everything in terms of evidence or disproving
 10 everything what's in that indictment; you understand that?

11 PROSPECTIVE JUROR: Yes.

12 MR. BEACH: A natural corollary to that is,
 13 every defendant when they are charged with a crime, have a
 14 Fifth Amendment right against self-incrimination. If he wants
 15 to testify on his behalf, he can; but if he doesn't, Judge
 16 White will instruct you that you can't hold that against him
 17 for any reason whatsoever.

18 Can you follow that law, sir?

19 PROSPECTIVE JUROR: Yes.

20 MR. BEACH: All right. That's your civics
 21 lecture on the first part of the trial. And we call it -- it
 22 is like a two-act play, all right. The first act -- the first
 23 part of the criminal trial, the jury's only question is, is he
 24 guilty or not guilty. Has the State met its burden of proof.
 25 Has the State washed away that presumption of innocence by

1 proof beyond a reasonable doubt, proved everything they are
 2 required to by law. That's the only question the jury has to
 3 answer at the first phase, the first act of this trial, okay.

4 Now, let's assume -- obviously if we don't, and the jury
 5 has a reasonable doubt, what do they do? They find him not
 6 guilty, right. The trial is over, you go home, they go home,
 7 and there is no act two, there is no second part of the trial.
 8 But for purposes of our discussion, let's assume that we have
 9 met our burden and we have proven Mr. Ruiz guilty beyond a
 10 reasonable doubt exactly as he is charged in the indictment.
 11 It would be your obligation pursuant to your oath at this time
 12 to find him guilty because we have proven it beyond a
 13 reasonable doubt.

14 Could you and would you find him guilty if that was the
 15 case?

16 PROSPECTIVE JUROR: Yes.

17 MR. BEACH: Once that is done, that ends act
 18 one, okay. Just like you would if you went to a play, at the
 19 end of act one, the curtain comes down, you go out into the
 20 hallway with the rest of the audience. And guess what, you
 21 done know how the play is going to end, do you?

22 PROSPECTIVE JUROR: No.

23 MR. BEACH: You have got to come back in after
 24 the intermission and watch act two before you are going to
 25 know how this drama is going to unfold. That's kind of like

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1 it is in a criminal trial. Just simply because you have found
 2 someone guilty of a crime, in this case capital murder, there
 3 is nothing automatic one way or the other about what
 4 punishment that defendant is going to get; you understand
 5 that?

6 PROSPECTIVE JUROR: Yes.

7 MR. BEACH: Okay. Like we talked about, once a
 8 defendant is found guilty of capital murder, Mr. Caldwell, his
 9 best day ever from that point on is life in prison without
 10 even the possibility of parole. That's the best he is looking
 11 at, okay. He could bring peace to the Middle East. He could
 12 find a cure for cancer in prison, guess what, he is never
 13 going to get out unless he escapes. No possible parole,
 14 that's the best sentence he is looking at.

15 A lot of folks tell us that if I find someone guilty of
 16 intentional capital murder, remember what capital murder is
 17 versus just regular first degree murder. Capital murder is
 18 one of those special categories elevated above first degree
 19 murder. And they tell us if I find someone guilty of an
 20 intentional capital murder, I don't care what you say,
 21 Mr. Beach, it is going to be automatic in my mind, he is never
 22 going to get a life sentence, he will always get a death
 23 sentence. And obviously if that was the case, that juror
 24 wouldn't be qualified to be on this case; you understand that?

25 PROSPECTIVE JUROR: Yes.

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1 MR. BEACH: And just like you presumed him to be
 2 innocent at the first part of the trial, you are to have the
 3 proper mind-set going into the punishment phase of the trial.
 4 You are to presume that a life sentence without parole is the
 5 appropriate punishment. Even though he has been found guilty
 6 of an intentional capital murder, the mind-set of each juror
 7 going into act two or the punishment phase of this criminal
 8 trial, is that he stays there at that life sentence, okay.
 9 And not until the State proves to me beyond a reasonable doubt
 10 that life sentence should be elevated up to a death penalty am
 11 I going to change that.

12 You understand how it is supposed to work?

13 PROSPECTIVE JUROR: Understood.

14 MR. BEACH: How do you feel about that?

15 PROSPECTIVE JUROR: It is something that has to
 16 be done, civic duty.

17 MR. BEACH: It's the law?

18 PROSPECTIVE JUROR: Yeah.

19 MR. BEACH: You know, some folks, again, they
 20 come down here and fill out these questionnaires, you are
 21 doing the best you can to fill it out honestly, I am sure you
 22 had no idea when you came down that Friday, you know, what you
 23 were getting into, you know. And so you are filling out your
 24 questionnaire, people have, you know, they have opinions. But
 25 the bottom line is, the seven jurors we have already

1 impaneled, they have told us that, yeah, I have personal
 2 opinions; but I understand the difference between having a
 3 personal opinion and what the law is here in this capital
 4 murder case. And they have all assured us that I can set
 5 aside my personal opinions and do everything within my powers
 6 to follow the law that Judge White is going to give in this
 7 case.

8 Can you do that, sir?

9 PROSPECTIVE JUROR: Yes.

10 MR. BEACH: So you understand just because you
 11 found someone guilty of an intentional capital murder in act
 12 one, or the first part, there is nothing automatic? There is
 13 nothing determinant about whether he is going to get life or
 14 death?

15 PROSPECTIVE JUROR: I understand.

16 MR. BEACH: And he stays at that life sentence
 17 until we prove to you and 11 other jurors that that life
 18 sentence should be elevated up to a death sentence?

19 PROSPECTIVE JUROR: I understand.

20 MR. BEACH: How is that done? Obviously at act
 21 two, at the second part of this trial, we call it the
 22 punishment phase of the trial, each side is entitled to bring
 23 additional evidence, okay. Obviously, again just like at the
 24 first part of the trial, to get that life sentence elevated up
 25 to a death sentence, who are you looking to convince you to do

1 that beyond a reasonable doubt?

2 PROSPECTIVE JUROR: The prosecution.
 3 MR. BEACH: Again, they don't have to do
 4 anything. You have to look to us to prove to you beyond a
 5 reasonable doubt that a death penalty is the appropriate
 6 punishment in this case. Now, how do we do that here in
 7 Texas? Well, it is not a situation where you hear additional
 8 evidence and go back and write life or death, that's not how
 9 it works. The way that life sentence is elevated up to a
 10 death sentence is how they answer that first question to your
 11 left.

12 Take just a second to look at that. All right. Before
 13 the State is entitled to a death penalty, before the State is
 14 entitled to have that life sentence elevated up to a death
 15 penalty, would you agree that we call that the future danger
 16 question?

17 Here in Texas, the legislative scheme is, before someone
 18 is going to get a death penalty, before someone gets the
 19 ultimate punishment, not only are they going to be a convicted
 20 capital murderer, that same jury that has convicted them of
 21 capital murder is going to have to decide beyond a reasonable
 22 doubt that he is going to be a future danger to society. And
 23 that's what that first question is asking you to do. If you
 24 read that in the first line and two words, again we have the
 25 burden of proof. We have to prove to a jury beyond a

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1 reasonable doubt that he is going to be a future danger.
 2 Okay.

3 Now, let's look -- break this question down in a little
 4 more step by step here. We didn't word this question, again
 5 the Dallas D.A.'s office didn't do it, it was the Texas
 6 legislature. They could have worded this question anyway they
 7 wanted to. Keep in mind they kind of break it down into three
 8 parts, the first part is probability. The second key phrase
 9 is commit criminal acts of violence. And the third key word,
 10 that word are society, okay. And superimposed above all those
 11 three subparts is the burden of proof.

12 We have to prove in all probability that he will commit
 13 future acts of violence or be a continuing future threat to
 14 society. And our burden is to prove everything in that
 15 question there.

16 Now, the kicker is there is no legal definitions for
 17 those terms. So it is going to be what that word probability
 18 means to you. In the context of that question and the other
 19 11 juror. We have asked everybody sitting up there in the
 20 context of that question, what is it that word probability
 21 mean to you?

22 PROSPECTIVE JUROR: That there is a chance that
 23 it would happen again.

24 MR. BEACH: Now, I know you are an accountant
 25 and you have a heavy math background?

1 PROSPECTIVE JUROR: Yes.

2 MR. BEACH: Statistically probability means
 3 literally a chance?

4 PROSPECTIVE JUROR: Uh-huh.

5 MR. BEACH: Would you agree with me, sir, if you
 6 ever watch the weather at night, when David Finfrock says it
 7 is possible that it is going to rain tomorrow, you might not
 8 take that real serious. But if Finfrock says it is probable
 9 that it is going to rain tomorrow, that gives you a higher
 10 level of certainty that it is going to rain tomorrow; would
 11 you agree with me?

12 PROSPECTIVE JUROR: Yes.

13 MR. BEACH: Most jurors tell us that that word
 14 means more likely than not, greater than 50 percent. I guess
 15 anything is possible. I could -- it is possible I guess I
 16 could win Olympic Gold at the 2010 hundred meter dash, ain't
 17 going to happen; but theoretically it is possible.

18 Would you agree with me that that word probability is
 19 going to be a higher degree of chance than what we are talking
 20 about?

21 PROSPECTIVE JUROR: Yes.

22 MR. BEACH: Okay. We have to prove beyond a
 23 reasonable doubt that in all probability the defendant will
 24 commit criminal acts of violence.

25 Again, the legislature could have said will commit

1 a second to read that to yourself.
 2 PROSPECTIVE JUROR: Okay.
 3 MR. BEACH: We call that the safety net
 4 question. Or kind of the safety valve question. What that
 5 question is asking you to do, sir, is before you ever get to
 6 it, you have found him guilty of an intentional capital
 7 murder, and that on top of that, now you have found that he is
 8 going to be a future danger no matter where he is, no matter
 9 what society he is going to be in, he is going to be a future
 10 danger to that society. And he is sitting on that death
 11 sentence. The legislature want you and the 11 other jurors
 12 before you etch that death sentence in stone inevitably for
 13 all time, they want the jury to go back and re-assess
 14 everything, okay. Is there something that we weren't allowed
 15 to consider, something in his background, something about his
 16 participation in the offense, the offense itself, something
 17 that leads us to believe that, you know what, he is worthy of
 18 a death sentence, because of this mitigating circumstance, we
 19 believe is sufficient, we are going to change that death
 20 sentence back to a life sentence. That's kind of the mental
 21 gymnastics that question is asking you to perform; you
 22 understand that?

23 PROSPECTIVE JUROR: Yes.
 24 MR. BEACH: And again, honestly, sir, there have
 25 been some folks that tell us, once I have convicted someone of

1 capital murder and once I have been convinced that he is going
 2 to be a future danger to society, there is nothing that is
 3 ever going to get me to change that death penalty back to a
 4 life sentence. And that's fine for them to think that, but
 5 they wouldn't be qualified to be a juror in this case, if that
 6 was their belief, if that's how they were going to conduct
 7 themselves.

8 Do you feel like that?

9 PROSPECTIVE JUROR: No.
 10 MR. BEACH: And again what -- the key -- to me
 11 the three key words there are sufficient mitigating
 12 circumstance, okay. And this can't be he has got a nice
 13 haircut. So he got a nice haircut, so therefore I am going to
 14 spare his life and give him life. It has to be --

15 MR. BRAUCHLE: Your Honor, that is a
 16 misstatement of the law.

17 MR. BEACH: I will withdraw the haircut.

18 There has to be something sufficiently mitigating in this
 19 defendant's background and his upbringing, like it says there,
 20 the circumstances of the offense it has to be tied to one of
 21 those things that convinces you that a life sentence is the
 22 equitable, just, merciful, whatever you want to say, is the
 23 just punishment in this case.

24 Some folks tell us -- obviously we can't execute mentally
 25 retarded folks in this country anymore. That was handed down

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1 six or seven years ago. There are some folks that are not
 2 technically mentally retarded, but they are right there at the
 3 cusp. Some folks say that might be, depending on the
 4 circumstances, that might be one of those circumstances to me
 5 that mitigates this individual's personal moral culpability
 6 that I think he is going to be a future danger. He did this
 7 murder, but I think a life sentence, because of this, is the
 8 just outcome of this case. That's how it is supposed to work,
 9 okay?

10 PROSPECTIVE JUROR: Okay.
 11 MR. BEACH: Anything come to your mind right
 12 now, sir, in terms of what might be a sufficient mitigating
 13 circumstance that might cause you to take that death sentence
 14 back to a life sentence?

15 PROSPECTIVE JUROR: I guess being an abused
 16 child maybe.

17 MR. BEACH: Perfect. That's a biggie. Someone
 18 who has severely abusive parents, tortures them, don't love
 19 them. Basically raised a monster?

20 PROSPECTIVE JUROR: Right.
 21 MR. BEACH: That's something that that could be
 22 a sufficient mitigating circumstance. That's what it is
 23 asking you to do. Is that last -- it's that last hurdle
 24 before the curtain comes down finally and that death sentence
 25 is etched in stone. It is a little -- well, it causes you to

1 have to have the mind-set, even though I found someone guilty
 2 and even though I found that he was going to be a future
 3 danger, you know what, whatever it is sufficient mitigating
 4 circumstance is, whatever it is, I think a life sentence is
 5 the appropriate punishment. And you could go through those
 6 hurdles and that -- those exercises, and if you believed after
 7 hearing a sufficient mitigating circumstance, you believed
 8 that a life sentence was the appropriate sentence, you could
 9 and would return a life sentence?

10 PROSPECTIVE JUROR: Yes.
 11 MR. BEACH: Any question in your mind about
 12 that?

13 PROSPECTIVE JUROR: No.
 14 MR. BEACH: You are not one of those folks that
 15 just believe once I find someone guilty, once I find they are
 16 going to be a future danger, the curtains is over, the play is
 17 over and I am done?

18 PROSPECTIVE JUROR: No.
 19 MR. BEACH: All right. I am just about done

20 with you, and I appreciate your patience with me.
 21 I want to go back to the first part of the trial and
 22 cover something very briefly. Again we can't -- we have a
 23 pretty good idea what the evidence is in this case.
 24 Obviously, you would hope that we do at this point in time,
 25 almost a year out. We can't crystal ball every contingency

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1 and everything that might happen in a case like this. I am
 2 going to give you an example.
 3 Obviously he is charged with capital murder, where the
 4 only two possible punishments are life and death, okay. Let's
 5 assume, and we will use an example involving a police officer,
 6 let's go back to the convenience store example where someone
 7 goes in and robs a convenience store and murders a clerk.
 8 Let's assume you hear evidence like that and you believe after
 9 hearing all the evidence and the defendant went in and
 10 actually committed the murder, intentional murder, but did not
 11 commit any robbery and did not have any intent to commit a
 12 robbery. He just walked in for whatever reason, decided to
 13 murder the clerk. And you believe that, what would be the
 14 outcome in that case? He wouldn't be found completely not
 15 guilty, because he would be guilty of the intentional murder.
 16 Because a jury did not believe that it was a murder during a
 17 robbery, he wouldn't be guilty of capital murder, he would
 18 just be guilty for first degree murder.

19 PROSPECTIVE JUROR: Right.

20 MR. BEACH: Okay. You understand how that might
 21 work in a capital murder case?

22 PROSPECTIVE JUROR: Uh-huh.

23 MR. BEACH: Briefly, in the case of a police
 24 officer shooting case, you might believe he murdered the
 25 police officer, but the police officer did not identify

1 himself or he was in plain clothes and the defendant, you had
 2 a reasonable doubt the defendant knew who he was murdering was
 3 a police officer, that came about. You would find him guilty
 4 of murder but not guilty of capital murder; you understand
 5 that?

6 PROSPECTIVE JUROR: Yes.

7 MR. BEACH: What happens if you find the
 8 defendant guilty of murder here in Texas? Well, unlike
 9 capital murder, where there is just two possible punishments,
 10 if you are found guilty of murder in Texas, you got a vast
 11 wide range of punishment to consider, all the way down from
 12 five years in the penitentiary up to life in the penitentiary.
 13 And the reason why the legislature has that broad range of
 14 punishment in a murder case, not a capital murder case, but a
 15 murder case is cause they recognize there are some thousands
 16 of possible fact situations.

17 PROSPECTIVE JUROR: Yeah.

18 MR. BEACH: Thousands of, you know, levels of
 19 culpability, maybe the victim had some culpability. Whatever
 20 the case is, the legislature wants that wide range available
 21 so a jury can do anything within that range, okay.

22 Now, to be qualified to be a juror in a murder case, you
 23 would have to be able to assure the Court that, you know, I
 24 can't commit one way or the other, just like you have been up
 25 to this point in time. My mind would be open to the full

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1 range of punishment in a murder case. And right now as I sit
 2 here, I might not be able to think of what a possible fact
 3 situation could be where as little as five years would be
 4 appropriate. You know if I saw that and believed after
 5 hearing everything that as little as a five-year sentence
 6 would be appropriate for a murder case, I could do it. Just
 7 like if I felt a 50-year sentence was the appropriate. Or a
 8 99-year sentence or a life. After I heard everything and I
 9 believed in my heart that's what the evidence compelled me to
 10 do, I can do it or anywhere in between.

11 Could you do that, sir?

12 PROSPECTIVE JUROR: Yes.

13 MR. BEACH: Last thing. And I don't think I
 14 need to spend a whole lot of time on this. But again at the
 15 first part of the trial, in any murder case or capital murder
 16 case, there may be an issue raised of self-defense, even
 17 though there is a police officer involved, okay.

18 Let me tell you how that might work. I might go over
 19 right now, and you see Detective Crump with his eyes almost
 20 closed over there, I might go over there and pull my gun out
 21 and blow his brains out right now. Guess what, that would be
 22 capital murder, he was a peace officer in the line of duty and
 23 I intentionally murdered him, that would be capital murder.
 24 Everybody in the courtroom saw me do it.

25 Let's say at trial, though, I had a couple of my running

1 buddies from back when it happened and my buddies came in and
 2 testified and said that's not how it happened at all. Beach
 3 was sitting there minding his own business. We saw Crump get
 4 up, come over to Beach, pull out his service revolver, and put
 5 it to back of Beach's head and said, I am going to kill you.
 6 And Beach turned the gun around and defended himself and shot
 7 Crump in fear for his life. What would Judge White have to do
 8 in a case like that? Well, it would be unbelievable, it would
 9 be completely incredible, but Judge White would have to submit
 10 to a jury the law of self-defense because my buddies raised
 11 the question of self-defense.

12 You understand how that might possibly work?

13 PROSPECTIVE JUROR: Yes.

14 MR. BEACH: Because it is in the charge, you
 15 don't have to go with it, okay. You have to go with the
 16 credible, believable evidence.

17 PROSPECTIVE JUROR: Uh-huh.

18 MR. BEACH: And just because it is raised by the
 19 evidence, doesn't mean the jury has to buy it or give any
 20 credibility to it; you understand that?

21 PROSPECTIVE JUROR: Yes.

22 MR. BEACH: Obviously, if it was a situation
 23 where Crump hated me for 20 years and decided this is the day
 24 he was going to end my life, and came over and pulled his gun
 25 out and said, Beach, I am going to kill you, and even though

1 he was a police officer acting in the line of duty, guess
 2 what, I have right to defend myself.

3 Would you agree with that?

4 PROSPECTIVE JUROR: Yes.

5 MR. BEACH: And would you agree with that law no
 6 matters what the individual's occupation, police officer,
 7 plumber, pastor whatever, if they are threatening you with
 8 unlawful deadly force, the law says you have the right to
 9 defend yourself?

10 PROSPECTIVE JUROR: Yes.

11 MR. BEACH: Can you follow that law?

12 PROSPECTIVE JUROR: Yes.

13 MR. BEACH: Anything as you are sitting up there
 14 right now, I have been doing a lot of talking, I apologize,
 15 anything that you are confused about that you think I need to
 16 know about before I turn you over to Defense lawyers in this
 17 case?

18 PROSPECTIVE JUROR: No, sir.

19 MR. BEACH: Mr. Caldwell, I appreciate your
 20 patience and your candor with me.

21 And I pass the juror at this time, Your Honor.

22 MR. BRAUCHLE: Can we have a short break?

23 THE COURT: Yes, we may.

24 (Prospective juror retired from the courtroom.)

25 (Recess taken.)

1 (Prospective juror entered the courtroom.)
 2 THE COURT: You may be seated.
 3 You may proceed, Mr. Brauchle.

4 VOIR DIRE EXAMINATION

5 BY MR. BRAUCHLE:

6 Mr. Caldwell, as everybody has told you, my name is Paul
 7 Brauchle. And I will be torturing about as long as Mr. Beach
 8 did. Unfortunately, it is something that both sides have to
 9 impose on people in your unfortunate situation. We are not
 10 trying to do it to pry into your affairs or whatever.
 11 Obviously as Mr. Beach has pointed out to you, this is
 12 literally a life-or-death situation. And your views in regard
 13 to what we are going to talk to you about are extremely
 14 important to both sides.

15 You don't have to watch too many TV shows to figure out
 16 that the people at this table don't see things the way the
 17 other people do, if they did, we could just have you subjected
 18 to one interrogation and that would be it. But obviously we
 19 think that some of the principles that we are going to talk
 20 about, some of the questions we are going to talk about,
 21 obviously can be viewed from more than one perspective. And
 22 that's what I am going to talk to you about.

23 You got any questions about anything that Mr. Beach asked
 24 you about?

25 PROSPECTIVE JUROR: No.

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1 MR. BRAUCHLE: In regard to that, I guess the
 2 long and short of what I just preambled to you, is we really
 3 don't care what you think as long as you tell us what you
 4 think. We are not down here thinking that we can reverse 50
 5 years thought process and what have you, but it is important
 6 that you share your thoughts with us.

7 Let's go to the first part of, I guess, where we need to
 8 start and that's the crime of murder. As Mr. Beach alluded to
 9 and as I will flesh out a little more, the murder is the
 10 unlawful taking of a human life without any legal excuse or
 11 justification. The legal excuse or justification would be say
 12 insanity. If I am in insane, I can't be held accountable for
 13 my actions. If I kill somebody in self-defense, that is not
 14 against the law. If I reach in here and take a gun out that I
 15 bought over the lunch hour and hold it up to show it to you
 16 and ask you if you have ever seen one like it, and it goes off
 17 and kills the bailiff, that's an accident. It's ranked
 18 stupidity and what have you, but it is not really a criminal
 19 act. Cause, see, I didn't have any intent to do that. I have
 20 intent to kill somebody when I am acting in self-defense quite
 21 obviously, but the law justifies self-defense. I can protect
 22 Ms. Handley from an attack by Mr. Beach. I have got the right
 23 to protect other people from illegal attack. So a certain
 24 extent, I have a right to dispatch people protecting property.
 25 All those are legal excuses and justifications. I could go

1 through any number of others, but I think you probably
 2 understand what we are talking about.

3 But a murder is always an intentional act. I want
 4 somebody dead and I do what it takes to get them that way.
 5 And that's a real coldblooded definition of murder, but that's
 6 what we are dealing with down here. It is not anything that
 7 happens by accident or mistake or anything. I want somebody
 8 dead and I do what it takes to get them there. That's what
 9 you are dealing with when you are dealing with the crime of
 10 murder.

11 Capital murder is always an intentional murder plus
 12 something else. A protected class of people or whatever
 13 situation applies. Children under six, police officers,
 14 people over 65, people killed during a robbery, rape,
 15 kidnapping, burglary or arson. You know any number of things.
 16 We don't need to go into all of them.

17 Do you have any thoughts of any that you think probably
 18 shouldn't be in the capital murder category?

19 PROSPECTIVE JUROR: No.

20 MR. BRAUCHLE: Would you add any to it?

21 PROSPECTIVE JUROR: No.

22 MR. BRAUCHLE: We sometimes pretend down here,
 23 say you are the governor for the day or you are the king for
 24 the day, you could write the laws as you see fit and nobody
 25 could mess with them. So I take it if you were the governor,

1 or the king for the day, you wouldn't add any new capital
2 crimes to our list?

3 PROSPECTIVE JUROR: No.

4 MR. BRAUCHLE: Think of any that you are not
5 real sure of that you might not view as capital murder?

6 PROSPECTIVE JUROR: No.

7 MR. BRAUCHLE: Now, let's go back to the crime
8 of murder. You understand that it carries a punishment range
9 from five years imprison up to 99 years imprison to life? If
10 you were the governor for the day, where do you think you
11 would set the boundaries for the punishment for the crime of
12 murder? As we discussed an intentional act?

13 PROSPECTIVE JUROR: Within that framework, I
14 don't understand.

15 MR. BRAUCHLE: You don't have to do it within
16 that framework?

17 PROSPECTIVE JUROR: Okay.

18 MR. BRAUCHLE: You got a blank slate. You can
19 walk over to it and say from this day forward, the punishment
20 for the crime of murder is X to Y, or -- or the legislature
21 could have is done this. They could have just passed a law
22 that said anybody convicted of murder in the State of Texas,
23 gets 40 years, 50 years, ten years, they could have sat it at
24 any one number. When a jury came back and found someone
25 guilty, that would be it. So you wouldn't have to go back and

1 deliberate, do whatever, it would just be one number or one
2 sentence fit everybody. But I am asking you as to what your
3 thoughts are as to what the punishment should be for murder?

4 PROSPECTIVE JUROR: I think the current
5 perimeters are fine.

6 MR. BRAUCHLE: You don't have any quarrels?

7 PROSPECTIVE JUROR: No.

8 MR. BRAUCHLE: So if you found somebody guilty
9 of an intentional murder, you could consider, and if you
10 thought it was appropriate, give as little as five years in
11 the penitentiary for someone that killed another person
12 without any legal excuse or justification?

13 PROSPECTIVE JUROR: Yes.

14 MR. BRAUCHLE: Any thoughts on that other than
15 what you have shared with us?

16 PROSPECTIVE JUROR: No.

17 MR. BRAUCHLE: You think there would ever be a
18 situation where you could do that?

19 PROSPECTIVE JUROR: Probably.

20 MR. BRAUCHLE: What would you look for in
21 setting that punishment in a case?

22 PROSPECTIVE JUROR: Extenuating circumstances,
23 the proof provided by the prosecution and whatnot, whatever
24 could be refuted.

25 MR. BRAUCHLE: Okay. In regard to extenuating

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1 circumstances, would those be on the State's case in chief or
2 Defense of extenuating circumstances?

3 PROSPECTIVE JUROR: I am not sure what you
4 mean.

5 MR. BRAUCHLE: Well, see I am not exactly sure
6 what you mean by extenuating circumstances. Would that be
7 something that caused the person to be murdered or?

8 PROSPECTIVE JUROR: Could be a cause.

9 MR. BRAUCHLE: Could you share a little more of
10 that as to what you are thinking about would be important to
11 you, extenuating?

12 PROSPECTIVE JUROR: Well, let's say that the
13 accused was felt threatened in the situation.

14 MR. BRAUCHLE: So that goes back to
15 self-defense?

16 PROSPECTIVE JUROR: Yes.

17 MR. BRAUCHLE: If I feel threatened and it's a
18 legitimate fear of a threat to my life or to my person on my
19 part, I can kill somebody.

20 PROSPECTIVE JUROR: Yes.

21 MR. BRAUCHLE: And it is not murder. Let me
22 kind of skip around on that. Mr. Beach talked to you about
23 self-defense. I have talked to you about it some, it's a
24 legitimate defense. As you can probably see by what you have
25 just talked about, may very well fit into a lot of different

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1 situations. Certain interactions between persons, obviously,
2 one might think that they are acting in defense of themselves.
3 The other person may or may not -- their actions would
4 obviously be important to decide that. But the right to
5 self-defense is always looked to as to what the person
6 claiming self-defense, what their situation was. It is not
7 what -- it is not what this person over here thought, I was
8 thinking when I shot my co-counsel in self-defense.

9 Now, obviously he can testify to facts that occurred
10 before or after or during the thing. But you look to the
11 person that is on trial, what their position is, because these
12 people over here, they may or may not be threatened. They are
13 not people that have, you know taken somebody's life in
14 self-defense. It is what's my perspective of the situation.

15 Does that make sense?

16 PROSPECTIVE JUROR: Yes.

17 MR. BRAUCHLE: You have any quarrels with that?

18 PROSPECTIVE JUROR: No.

19 MR. BRAUCHLE: You know you don't come in and
20 ask somebody in the back of the courtroom what was I thinking
21 when I took out a gun and shot somebody, because obviously
22 they don't know.

23 PROSPECTIVE JUROR: Uh-huh.

24 MR. BRAUCHLE: Now, we could take everybody in
25 here and put them on the stand where you are and say what

1 happened right before this happened. And obviously that
 2 testimony might very well be instructive as to what the
 3 situation was in my regard to shooting someone. But there is
 4 more than one way. It is always looked to my perception,
 5 okay.

6 Now, then, I think you have told us that you can make the
 7 State prove beyond a reasonable doubt each and every one of
 8 those elements in the indictment. We talked about elements.
 9 Nobody tell you what those are. But back in high school or
 10 junior high when you used to break up sentences, diagram and
 11 all that, what you do is, you divide that up into parts
 12 basically.

13 The first one -- pardon me, would be say the date, then
 14 you move along to say in Dallas County, Texas, that would be
 15 another part. The defendant's name, that's another part. See
 16 you break it up into pieces. And the State has to prove each
 17 and every one of those pieces beyond a reasonable doubt. It's
 18 not nine out of ten, it has got to be ten out of ten. And
 19 every one of them has got to be proven beyond a reasonable
 20 doubt. There is no one that is more important or less
 21 important than the others. Even though it may seem
 22 unimportant, they have to prove each and every one of them.
 23 You work for the Army and Air Force Exchange; is that off of
 24 Walton Walker?

25 PROSPECTIVE JUROR: Yes.

1 MR. BRAUCHLE: What is the intersection there,
 2 Ledbetter and Walton Walker?
 3 PROSPECTIVE JUROR: Yes, just up the street.
 4 MR. BRAUCHLE: So you know exactly where that
 5 is?

6 PROSPECTIVE JUROR: Uh-huh.
 7 MR. BRAUCHLE: Let's just say that the State
 8 brings in testimony, and all the people say, I was there, it
 9 happened at Walton Walker and Ledbetter. But nobody ever says
 10 that Walton Walker and Ledbetter is in Dallas County. And you
 11 are sitting there going, Hey, I know where it is; but you can
 12 only act on testimony that you hear from where you are
 13 sitting. You can't -- you can't fill in the blanks for the
 14 State.

15 See where I am coming from?

16 PROSPECTIVE JUROR: Yes.
 17 MR. BRAUCHLE: So I am not saying that that
 18 would ever happen, but that's kind of an extreme example of
 19 how high the State's burden of proof is.

20 PROSPECTIVE JUROR: Okay.
 21 MR. BRAUCHLE: You can't push them over the top,
 22 you can't say, well, I know this, that and the other, they
 23 just forgot to come in and tell us about it. And we can go
 24 ahead and mark that one as being proven beyond a reasonable
 25 doubt.

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1 Let me go back to your questionnaire. What kind of
 2 shooting do you do?

3 PROSPECTIVE JUROR: I have a handgun, I go to a
 4 range.

5 MR. BRAUCHLE: You do competition shooting?

6 PROSPECTIVE JUROR: No, I am not that good a
 7 shot.

8 MR. BRAUCHLE: You just see if you can knock the
 9 target over or put it in the block, whatever?

10 PROSPECTIVE JUROR: I am a little bit better
 11 than that.

12 MR. BRAUCHLE: I will quit judging people by my
 13 standard. What kind of pistol do you have?

14 PROSPECTIVE JUROR: It's a .380 semiautomatic.

15 MR. BRAUCHLE: Okay. And how often do you do
 16 that?

17 PROSPECTIVE JUROR: Well, I have got an annual
 18 membership. And when I prepaid, they said you got to go once
 19 a month to get your money's worth, so I go about once a month.

20 MR. BRAUCHLE: Does your wife shoot also?

21 PROSPECTIVE JUROR: I tried to get her to shoot,
 22 but she won't do it.

23 MR. BRAUCHLE: What was she in the military?

24 PROSPECTIVE JUROR: That was another error on
 25 my paperwork, I thought I was answering for myself on those

1 papers, she has never been in the military.

2 MR. BRAUCHLE: But both of you work for the --
 3 PROSPECTIVE JUROR: Yes. She has been there
 4 about 17 years.

5 MR. BRAUCHLE: All right. In regard to your
 6 church affiliation, the -- you attend Nazarene Church in
 7 Duncanville?

8 PROSPECTIVE JUROR: Trinity Nazarene, yes.
 9 MR. BRAUCHLE: And they don't have, as far as
 10 you know, any physical position as to capital punishment?

11 PROSPECTIVE JUROR: I don't think so. I haven't
 12 gone to the Nazarene that long.

13 MR. BRAUCHLE: What, were you a member another
 14 religion?

15 PROSPECTIVE JUROR: Methodist. I was raised a
 16 Methodist.

17 MR. BRAUCHLE: Okay. Let's go back and make you
 18 king again for the day. Would you have the death penalty for
 19 Texas?

20 PROSPECTIVE JUROR: Gee, I think so, yeah.

21 MR. BRAUCHLE: Any reason why?

22 PROSPECTIVE JUROR: I think it stands as a

23 deterrent.

24 MR. BRAUCHLE: You have obviously been in other
 25 states in the union and you know that I can't give you

1 percentages one way of the another, but I think Texas quite
 2 possibly in the minority in regards to having the death
 3 penalty. You think people that live in states that don't have
 4 the death penalty are less safe than people who live in states
 5 that do have the death penalty?

6 PROSPECTIVE JUROR: That's a good question.
 7 Probably not. It is probably no difference.

8 MR. BRAUCHLE: Okay. How does that -- how does
 9 that figure in then with your statement that you think that it
 10 might be a deterrent to crime?

11 PROSPECTIVE JUROR: Well, those states probably
 12 imprisons more than Texas does, I would hope. I don't have
 13 the statistics on me.

14 MR. BRAUCHLE: We don't want to get broken down
 15 with statistics. You know I may be wrong to the ratio, but it
 16 is a theoretical question.

17 PROSPECTIVE JUROR: Right.

18 MR. BRAUCHLE: Pie in the sky, one way or the
 19 other. But you think they probably make up for the lack of
 20 death penalty by greater incarceration?

21 PROSPECTIVE JUROR: Yes. Or greater rehab,
 22 rehabilitation.

23 MR. BRAUCHLE: What do you think about
 24 rehabilitation?

25 PROSPECTIVE JUROR: I think it can work.

1 MR. BRAUCHLE: Do you think that the State owes
 2 it to its citizens to attempt to rehabilitate those who have
 3 been convicted?

4 PROSPECTIVE JUROR: I would have to say, yes.
 5 MR. BRAUCHLE: In other words, if we are going
 6 to lock you up for five years, we ought to --

7 PROSPECTIVE JUROR: Try to --
 8 MR. BRAUCHLE: -- do something to where we can
 9 make you a viable person when you are released?

10 PROSPECTIVE JUROR: Yes, sir, yeah.

11 MR. BRAUCHLE: So if you were governor, you
 12 would stress that a little more than a little, right?

13 PROSPECTIVE JUROR: Yes.

14 MR. BRAUCHLE: You understand that your views in
 15 regard to that and the reality of what the punishment
 16 structure is in the case that we have got you down here on are
 17 really not very obtainable because the person either gets
 18 killed or they never get out of prison.

19 As Mr. Beach told you, Mr. Ruiz could go to prison, bring
 20 peace to the Middle East and cure cancer, you know, reverse
 21 global warming or any good aspect to our society, and he is
 22 not going to get out of prison or it is not going to keep him
 23 from being killed under a death sentence. So our views in
 24 regard to that, we have to really set those aside and just
 25 address these things right here.

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1 Let's go to special issue number one. If -- and I think
 2 you have answered this to a certain extent, but if you answer
 3 that yes -- well, let's back up. You understand that that
 4 question starts out being answered "no". It is kind of a
 5 continuum of the defendant being assumed to be not guilty. He
 6 is assumed to be not guilty. And because of that, he never
 7 has to present any evidence or rebut any evidence from the
 8 State. The State has to prove all the things on the
 9 indictment beyond a reasonable doubt. Once they do that, then
 10 you could find him guilty.

11 Now, then, you go into the second phase of the trial, and
 12 that issue is assumed to be answered "no". And you know from
 13 talking to Mr. Beach and from paying attention that that
 14 special issue that if that answer remains "no", the person
 15 gets life prison without parole. So basically the way the
 16 legislature has set this sentencing structure up, life
 17 imprison without parole is the preferred punishment. Because
 18 any failure on the State's part, it always reverts back to
 19 life prison without parole.

20 Do you have any quarrel with that? Seem like they could
 21 do it the opposite. If they answered "yes" -- I guess they
 22 could say it is always assumed to be "yes", and then it has to
 23 be found "no" for them to get a different result?

24 PROSPECTIVE JUROR: No, I don't have any
 25 problem with that.

1 MR. BRAUCHLE: Okay. If a person is found
 2 guilty of capital murder, some people say, Look, if I am
 3 sitting on a jury, and the State brings in evidence to
 4 convince me and the 11 other people beyond a reasonable doubt
 5 that the person on trial knowingly and intentionally took the
 6 life of a police officer, while that police officer was in the
 7 line of duty, and he knew that that police officer was in the
 8 line of duty, which would be what you would have to find to
 9 fine person guilty, when I get to special issue number one,
 10 the answer to that has already been figured out from my point
 11 of view. Because anybody who would do that, who would do that
 12 is always going to be in my mind a continuing threat to
 13 society.

14 See where I am coming from? What do you think in regard
 15 to that, would you think that the proper answer on that
 16 question would be "yes" because of what you would have found
 17 in regard to the first part of the trial?

18 PROSPECTIVE JUROR: No. I think that is an
 19 important consideration, continuing threat to society.

20 MR. BRAUCHLE: Okay. What do you think
 21 constitutes a continuing threat to society?

22 PROSPECTIVE JUROR: Probability that that
 23 offense would be repeated.

24 MR. BRAUCHLE: The offense that you would have
 25 decided in the first part of the trial?

1 PROSPECTIVE JUROR: Yes.
 2 MR. BRAUCHLE: Okay. Let's -- so you
 3 understand -- let me flush this out a little bit. The first
 4 part of the trial is to answer the Court's instructions or the
 5 Court's charge in regard to everything is going to be defined
 6 for you.

7 The phrases that are in there like in the line of duty or
 8 firearm, intentional, everything that you see on that paper
 9 just about has some sort of legal definition. So if you get
 10 stumped or you have an argument, you go back to the Court's
 11 charge.

12 Unfortunately when you get to these two special issues,
 13 which we think are most important, there is no definition. It
 14 is whatever you think it should be.

15 And you stated that to you probability meant chance that
 16 it would happen again; is that a correct statement?

17 PROSPECTIVE JUROR: Yes.

18 MR. BRAUCHLE: In regard to that, a chance just
 19 means just that, a chance that it could happen; would you
 20 agree with me?

21 PROSPECTIVE JUROR: Yes.

22 MR. BRAUCHLE: If that were the -- let me back
 23 up, you understand that probability comes right after
 24 reasonable doubt. And that reasonable doubt is a fairly high
 25 burden to prove; agree with me?

1 PROSPECTIVE JUROR: Yes.
 2 MR. BRAUCHLE: So if there has to be at least a
 3 reasonable doubt that there is a probability, would that still
 4 mean a chance to you?

5 PROSPECTIVE JUROR: Repeat that.
 6 MR. BRAUCHLE: I thought you might ask me to do
 7 that.

8 PROSPECTIVE JUROR: I would have to say to
 9 define it in my eyes, likelihood. There is a good likelihood
 10 in layman's terms that it would happen again.

11 MR. BRAUCHLE: Okay. Keep on.

12 PROSPECTIVE JUROR: That's all.

13 MR. BRAUCHLE: Okay. Let me go back again. You
 14 understand that reasonable doubt for you to find a person
 15 guilty beyond a reasonable doubt there has to be from our way
 16 of thinking a pretty high surety that things happen or that
 17 the evidence was such as the State would like for you to
 18 believe. I think I might have lost myself on that sentence.
 19 What I am saying, it is a high threshold. Beyond a reasonable
 20 doubt, some people say, Well, I have no reasonable doubt that
 21 it didn't happen. In other words, there is no question in my
 22 mind. And when we are coupling reasonable doubt with
 23 probability, I said you said chance and you said it is a
 24 likelihood.

25 PROSPECTIVE JUROR: Right.

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1 MR. BRAUCHLE: The law does tell us that
 2 probability has to mean more than 50 percent. Otherwise they
 3 could have just put chance in there.

4 PROSPECTIVE JUROR: Right.

5 MR. BRAUCHLE: And it would be -- and I am not
 6 trying to get on to you about it, your choice of words, the
 7 question would have probably not been very eliminating in that
 8 we can say, there is a chance that anybody in this room could
 9 possibly commit a criminal act of violence; would you agree
 10 with that?

11 PROSPECTIVE JUROR: Yes.

12 MR. BRAUCHLE: Okay. To your way of thinking,
 13 criminal act of violence, that that issue is inquiring about
 14 would be repeating the primary act, the primary crime again?

15 PROSPECTIVE JUROR: Yes.

16 MR. BRAUCHLE: Okay. And that would be -- that
 17 would then lead to the last part of the question, where it is
 18 because of the -- the high likelihood that the person would
 19 commit whatever the capital crime was again, that would be
 20 what would make him a continuing threat to society, am I
 21 putting words in your mouth?

22 PROSPECTIVE JUROR: No, you are doing good.

23 MR. BRAUCHLE: Would you mark that -- all right,
 24 here is the part from my point of view you really have to
 25 put -- this is better than being named king or whatever, what

1 you ever to do here, let's get to this last special issue.
 2 And that says, it doesn't say anything, but you have already
 3 found that the person committed the primary offense of capital
 4 murder. And you found that the person is going to be a
 5 continuing threat to society, and you are fairly certain of
 6 that because that has been proven to you beyond a reasonable
 7 doubt, and you have answered that question "yes". And you
 8 know that at that point in time when you are looking at the
 9 next special issue, the person is going to get a death
 10 sentence. And some people say, Look, I don't know who wrote
 11 this, and of course we didn't write it, somebody in the
 12 legislature wrote it. We don't want to take credit for it at
 13 all. But you see that they say, look, why would I ever find
 14 any evidence or circumstance or anything in the defendant's
 15 character, background or moral culpability that would want me
 16 to unleash him back on society by giving him life without
 17 parole, once I had already determined in my own mind that he
 18 is a capital murderer who deserves death?

19 See, you know, that's about as schizophrenic as you can
 20 get to have sat down with 11 other people and decided these
 21 first two issues, which result in the death penalty for the
 22 person who is on trial, and then you all go back -- well, you
 23 don't go back in because you are deciding those two things at
 24 the same time. But then you say, hey, time out. Now we got
 25 question one answered, let's go back and erase it, let's set

1 it aside and put the guy back where we could have left him
 2 before we answered question one "yes", see what I am saying?
 3 PROSPECTIVE JUROR: (Nods head).
 4 MR. BRAUCHLE: And a lot of people say, I may
 5 have kind of lose patterns of thought, but how could I ever
 6 see anyway or any reason doing that once I have decided that
 7 somebody is going to be a continuing threat to society. And
 8 we have already -- we have already known about his character,
 9 his background, his personal moral culpability, and any
 10 circumstances involving the case, when we decided question
 11 number one.

12 See they are not presented sequentially, we just call
 13 them one and two because that's the easy way to distinguish
 14 them for people in your situation. But it's a situation to
 15 where I guess you can answer them backwards, you could answer
 16 two before one or whatever, but they are going to be set out
 17 in the court's papers as the shorter one first and the longer
 18 one second. Then say, look, a lot of people tell us that
 19 doesn't make sense. Why would I ever want to reverse my
 20 rational thought process or my rational thought process to go
 21 against something that I have already decided and thought was
 22 the right thing to do 30 minutes ago or an hour ago or a day
 23 ago. See where I am coming from?

24 PROSPECTIVE JUROR: Uh-huh.
 25 MR. BRAUCHLE: Could you ever do that?

1 PROSPECTIVE JUROR: Yes.
 2 MR. BRAUCHLE: What would you look for in regard
 3 to being able to reverse the process?
 4 PROSPECTIVE JUROR: You reconsider the
 5 defendant's background, anything else that may have influenced
 6 his actions.
 7 MR. BRAUCHLE: Okay. So met me -- let me see if
 8 I am not putting words in your mouth, because I don't want to.
 9 But his character and background are things that influenced
 10 his actions, would those be things that influenced his actions
 11 in the guilt and innocence stage or that may or may not have
 12 come to bear in special issue number one?
 13 PROSPECTIVE JUROR: Wouldn't it be both?
 14 MR. BRAUCHLE: I am just asking you what your
 15 thought process?
 16 PROSPECTIVE JUROR: I would think in the first
 17 phase those would come out.
 18 MR. BRAUCHLE: Possibly?
 19 PROSPECTIVE JUROR: Yes.
 20 MR. BRAUCHLE: See the second part of the trial
 21 is called the punishment phase. And you may -- may or may not
 22 learn more about the person you are dealing with. That's when
 23 you might find things that might be something that would
 24 affect his actions as an adult or you may not. These people
 25 over here have already told you that they are going to do

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1 everything within their power to produce a death sentence. So
 2 it is unlikely that they are going to bring his baby pictures
 3 or anything like that down here to try and sway you with
 4 regards to special issue number two. We don't have to.

5 PROSPECTIVE JUROR: Right.
 6 MR. BRAUCHLE: So it's -- it's important to us
 7 to see what would be important to you if you could answer that
 8 question and what you would look to.

9 Let me throw another kicker in, you notice that special
 10 issue number one doesn't say anything about beyond a
 11 reasonable doubt?

12 PROSPECTIVE JUROR: Right.
 13 MR. BRAUCHLE: It doesn't have an actual burden
 14 and it doesn't say the defendant's character, let's just
 15 separate that phrase. What may be mitigating to you doesn't
 16 have to be mitigating to anybody else in the jury room. It
 17 could be Mr. Beach's example of a bad haircut or a good
 18 haircut. I mean it could be something that inconsequential or
 19 something that might be monumental. It doesn't tell you what
 20 it has to be that would get you to change your mind to reverse
 21 your process.

22 You see what I am saying?

23 PROSPECTIVE JUROR: Uh-huh.
 24 MR. BRAUCHLE: You think you could still do
 25 that?

1 PROSPECTIVE JUROR: Yes.
 2 MR. BRAUCHLE: Would there be any problem
 3 with -- obviously there might be some problem or we would hope
 4 there would be some problem cause none of these we would like
 5 for anybody to take lightly. But you think you would be able
 6 to answer that special issue?

7 PROSPECTIVE JUROR: Yeah.
 8 MR. BRAUCHLE: Is there anything that you would
 9 look to answer that in particular if I haven't already asked
 10 you that?

11 PROSPECTIVE JUROR: I can't think off the top of
 12 my head anything in particular.

13 MR. BRAUCHLE: Let me ask you this. Sometimes
 14 in regard to special issue number one, it can be divided up,
 15 it can start at the back and go forward. It has got a bunch
 16 of phrases and whatever there. But I think that the over-all
 17 gist is -- and of course this is just my own personal opinion,
 18 it is not the law in any way -- but I think that that question
 19 is asking the jurors because this guy is going to be a
 20 continuing threat to society, because of him committing
 21 criminal acts of violence, is killing him the only way that we
 22 can keep society safe from what he may do in the future? You
 23 see how that could be what they are getting at? Because it is
 24 not a deal like where they are asking you, will 30 years in
 25 prison be enough, would ten years in prison be enough. We are

1 talking about in a regular murder case. Because you know that
 2 the person is never going to get out of prison. And I guess
 3 that what it would ask for or what they might be asking you
 4 there, is society going to be safe just from sending this guy
 5 to prison, or to insure our safety, will we have to kill this
 6 person? Do you see that in any way in there, am I off base or
 7 is that what it is asking for?

8 PROSPECTIVE JUROR: That's what it is asking
 9 for.

10 MR. BRAUCHLE: Have you got any questions for
 11 any of my random rambling?

12 PROSPECTIVE JUROR: No, sir, I don't.

13 MR. BRAUCHLE: Obviously this isn't the most
 14 structured thing you had. Probably if you did have any
 15 questions, you wouldn't ask them?

16 PROSPECTIVE JUROR: I don't have any questions.

17 MR. BRAUCHLE: Okay. You will be glad to know I
 18 don't have anymore either. Thank you very much for your time?

19 PROSPECTIVE JUROR: Okay, thank you.

20 THE COURT: Thank you, you may step down.

21 PROSPECTIVE JUROR: Thank you.

22 (Prospective juror retired from the courtroom.)

23 (Recess taken.)

24 THE COURT: What says the State?

25 MR. BEACH: The State will accept Juror

1 Caldwell, No. 2029-B.

2 THE COURT: Very well.

3 Mr. Brauchle.

4 MR. BRAUCHLE: We would submit juror 2029-B in
 5 that he would misplace the burden in regard to special issue
 6 number one requiring that the defendant be probable in that he
 7 would commit the primary offense over again.

8 THE COURT: What do you mean, can you elaborate
 9 on that a little bit.

10 MR. BEACH: Judge, that is credit to his
 11 ingenuity.

12 THE COURT: I will overrule that.

13 MR. BRAUCHLE: Because of the court's erroneous
 14 rulings, we would have to use peremptory challenge number six
 15 I believe it is.

16 MR. BEACH: I think it is seven.

17 (Prospective juror entered the courtroom.)

18 THE COURT: You may be seated.

19 Mr. Caldwell, you did not make it as a juror on this
 20 case. You are excused and you are free to go.

21 PROSPECTIVE JUROR: Thank you.

22 THE COURT: Thank you for coming back, sir.

23 MR. BEACH: Thank you, sir, good luck.

24 (Prospective juror retired from the courtroom.)

25 (Pause in the proceedings.)

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1 (Prospective juror entered the courtroom.)

2 THE COURT: You may be seated.

3 Good afternoon, Ms. Maxwell, how are you doing today?

4 PROSPECTIVE JUROR: I'm good.

5 THE COURT: The attorneys have some additional
 6 questions to ask you, I apologize, you were waiting a little
 7 longer than we had intended, however, sometimes these
 8 interviews go a little longer, sometimes a little swifter.

9 What says State?

10 MS. HANDLEY: May it please the Court?

11 DEBORAH MAXWELL

12 was called as a prospective juror, after having been
 13 previously sworn by the Court, testified under oath as
 14 follows:

15 VOIR DIRE EXAMINATION

16 BY MS. HANDLEY:

17 Good afternoon Ms. Maxwell. Really thank you very much
 18 for your patience, we appreciate it. And we are very
 19 cognizance of your time and your time is important. But as
 20 the Judge said, sometimes these kind of go a little longer
 21 than anticipated. So I appreciate that up front and tell you
 22 that.

23 My name is Andrea Handley. To my right here is Marshall
 24 McCallum and Andy Beach. We are all Assistant District
 25 Attorneys here in Dallas County. We are in charge of the jury

1 selection for this particular case.

2 To my left here, these two gentlemen are Karo Johnson and
 3 Paul Brauchle. They are defense attorneys here in Dallas.
 4 And they represent the defendant in this case, that's the
 5 individual seated at the end of the table, Mr. Wesley Ruiz.

6 Do you know any of us?

7 PROSPECTIVE JUROR: No.

8 MS. HANDLEY: Okay, you have had quite a bit of
 9 time to sit back there and read over the questionnaire?

10 PROSPECTIVE JUROR: Yes, I have.

11 MS. HANDLEY: I think it is safe to say that you
 12 have had more than most people time to look at your
 13 questionnaire and kind of look it over again. I think when
 14 you came down on November 30th, you never expected to fill
 15 out this 18-page questionnaire?

16 PROSPECTIVE JUROR: No, I didn't.

17 MS. HANDLEY: And sometimes we put you on the
 18 spot and put you in that little chair with that pen and ask
 19 you to do the best you can and tell us what you think about
 20 your feelings about the death penalty and crime in general and
 21 a lot of personal information. And a lot of people do the
 22 best they can to be thorough. If I were to give you this
 23 questionnaire again today to ask you to fill it out, is there
 24 anything that you would change about that?

25 PROSPECTIVE JUROR: I put my wrong age on there.

1 MS. HANDLEY: Well, that is okay, you are
2 allowed to do that.

3 PROSPECTIVE JUROR: I didn't mean to lie, but I
4 did.

5 MS. HANDLEY: I think I will be celebrating my
6 fifth annual 40th birthday. So that's okay.

7 PROSPECTIVE JUROR: Yeah.

8 MS. HANDLEY: So you wouldn't change anything
9 about the questionnaire there?

10 PROSPECTIVE JUROR: No.

11 MS. HANDLEY: Let me tell what you is going on
12 here, Ms. Maxwell. We brought everybody down in that
13 collective group on the 30th and had hundreds of people fill
14 out questionnaires. We have been reading over those
15 questionnaires; and out of those, selecting a certain number
16 of people to come down and talk individually now. A little
17 bit more about this case and to feel out whether or not they
18 are a qualified juror for this particular kind of case. You
19 may be qualified for some other kind, but we are talking about
20 this kind of case now.

21 And whereas when you filled out the questionnaire, you
22 know it is one thing to talk about the death penalty
23 academically or theoretically, but it is kind of another thing
24 when you find yourself now, it is getting down to it and you
25 might actually be sitting on this jury, okay.

1 You will know by the end of today whether or not you are
2 going to be seated as a juror in this particular case, okay.
3 It is not going to be, okay, I can say a couple of things here
4 and hold back and maybe they will come back and ask me
5 something again in a couple of weeks. We need to know now,
6 okay. So I am probably going to do a lot of lecturing, what
7 is really important here is what we know about you and your
8 feelings.

9 What is paramount in all criminal cases and particularly
10 this case, ma'am, is that what we are looking for is 12 people
11 that can come in with a -- with an open mind, fair and
12 unbiased, listen to the evidence in the case, base their
13 verdict on the evidence in the case and really nothing else.
14 Everybody has their biases, everybody has certain prejudices
15 or they feel certain ways. And sometimes what makes you a
16 qualified juror is that you can put those things aside and
17 judge a case just on the facts of the case. Some people can
18 do that and some people can't. And that's fair, there is
19 nothing wrong with that. There is absolutely nothing wrong
20 with that.

21 But what we need to know is that you can give us your
22 full undivided attention and energy to this case and that you
23 don't have any outside distractions. So I will cover a couple
24 of preliminary things with you.

25 Are you a loan processor?

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1 PROSPECTIVE JUROR: Yes.

2 MS. HANDLEY: We are talking about picking the
3 jury right now, this is taking us here -- we have been doing
4 this for four weeks, we are about halfway there. This actual
5 case will probably start the first or second week of April,
6 okay. Once it starts, we anticipate that it could take
7 anywhere from five to eight working days, maybe even a little
8 bit more, maybe less to actually put on the case in chief,
9 okay. What I can't promise you is how long it would take a
10 jury to deliberate, all right. There is a possibility that
11 sometime in there, once you go to deliberations, you ever
12 heard of a jury being sequestered?

13 PROSPECTIVE JUROR: Yes.

14 MS. HANDLEY: Okay. Then you would have to go
15 and actually stay in a hotel room during deliberations, that
16 could happen maybe for one or two nights and that means you
17 can't go home to your family or have any contact with the
18 outside world. Given that time frame, that schedule, does
19 that pose any problem with you, with your work or family
20 situation?

21 PROSPECTIVE JUROR: It would be difficult. I
22 mean it could be achieved. I have three children, twin boys
23 that are 11 that are very active, but I also have a husband
24 who is at home. I do work off of commission some, so it would
25 impact my salary some if it was a long term.

1 MS. HANDLEY: And I can't promise you how long
2 it would be, I can only say a week maybe up to two weeks. And
3 so the question becomes up to you, Ms. Maxwell, since you are
4 working on a commission basis, is that going to be something
5 that is going to be distracting your attention away from the
6 case?

7 PROSPECTIVE JUROR: If it lasted for more than
8 two weeks, I think it would start to be a concern.

9 MS. HANDLEY: Okay.

10 PROSPECTIVE JUROR: I mean we all work for
11 money.

12 MS. HANDLEY: Sure, sure. Let me ask you
13 something else here. Going along that line of coming in being
14 fair and unbiased from the get-go. You said in your
15 questionnaire that you have a family friend that is a Dallas
16 Police Officer, I think that was on page eight of the
17 questionnaire?

18 PROSPECTIVE JUROR: Yes, I do.

19 MS. HANDLEY: Can you tell us his name?

20 PROSPECTIVE JUROR: Patrick Welsh. Sergeant
21 Patrick Welsh, it is in the -- it's sexual crimes, but nothing
22 to do with children, I think it is more adult.

23 MS. HANDLEY: Okay. Okay. How long have you
24 been friends with him?

25 PROSPECTIVE JUROR: Probably about five years.

1 MS. HANDLEY: About five years. And he is a
 2 sergeant with crimes of violence against sexual offenses?
 3 PROSPECTIVE JUROR: Right, right.
 4 MS. HANDLEY: But not necessarily crimes against
 5 children. I believe you put in your questionnaire, that you
 6 are not really familiar with the facts of this case, had you
 7 talked to him about this case?
 8 PROSPECTIVE JUROR: No. I don't see him -- he
 9 has moved away, I made contact through personal friends. He
 10 could call and my boys could spend the night over there. We
 11 are not on a day-to-day basis anymore.
 12 MS. HANDLEY: All right. You put down in your
 13 questionnaire, when we asked you about credibility of people,
 14 would you find an officer I believe that's on -- go with me
 15 there to page number five, if you will.
 16 PROSPECTIVE JUROR: Okay.
 17 MS. HANDLEY: We asked on there do you believe
 18 police officers are more or less likely to tell the truth than
 19 the average person, you put more likely there. Is that based
 20 on your friendship with police officers?
 21 PROSPECTIVE JUROR: I also work in a bank and
 22 know some police officers long ago. And yeah, I think that's
 23 their job. I think they should be more accountable than
 24 anybody else, yeah.
 25 MS. HANDLEY: They should be more accountable

1 than other people?
 2 PROSPECTIVE JUROR: Yeah.
 3 MS. HANDLEY: You said something that is
 4 interesting, though?
 5 PROSPECTIVE JUROR: I have contradicted myself?
 6 MS. HANDLEY: No, no. You said something
 7 interesting in there. You said the first thing you think of a
 8 Police Officer, first see them on the street and hoping I
 9 don't get a ticket?
 10 PROSPECTIVE JUROR: Yeah, I think we all do
 11 that.
 12 MS. HANDLEY: I do that. Then you said someone
 13 who is pretty much just like me. And I think that you make a
 14 good point with respect to what I am going to try to explain
 15 to you now, is that it is one thing to have a respect for
 16 officers or an assumption that when they are talking about
 17 their job, they are going to know more than the regular
 18 person, right?
 19 PROSPECTIVE JUROR: Uh-huh.
 20 MS. HANDLEY: But when it come down to them as
 21 just another individual, they are just like you and me, right?
 22 PROSPECTIVE JUROR: Yeah.
 23 MS. HANDLEY: They make mistakes, right?
 24 PROSPECTIVE JUROR: Uh-huh.
 25 MS. HANDLEY: Unfortunately sometimes some of

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 1 them may lie, they are not perfect, they are just like anybody
 2 else. And what we need to know in this particular case,
 3 because this is an offense dealing with the death of an
 4 officer, okay. What we need to know in this case, are you
 5 able to come in and start everybody out at the same level and
 6 judge their credibility based on what they say from the
 7 witness stand versus, you know, just a belief that you have
 8 right now. I hope I am explaining that very well.
 9 PROSPECTIVE JUROR: I think I get your question.
 10 I know it is not always true, but I do expect the officer to
 11 say more truth than lie, you know there is no bell that is
 12 going to click on my head and look at him and tell that he is
 13 not telling the truth.
 14 MS. HANDLEY: Right.
 15 PROSPECTIVE JUROR: But I do expect in that job
 16 title, that they are saying more the truth.
 17 MS. HANDLEY: Sure.
 18 PROSPECTIVE JUROR: Can I look at somebody
 19 and tell the difference. I can't look at them. I can listen
 20 and judge from listening maybe depending on how long I need to
 21 listen to them.
 22 MS. HANDLEY: Okay.
 23 PROSPECTIVE JUROR: But if they are here for
 24 five minutes, then I am probably not going to be able to form
 25 an opinion about that particular person.

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 1 MS. HANDLEY: You think you might give a police
 2 officer the benefit of the doubt?
 3 PROSPECTIVE JUROR: Yeah, they would get the
 4 benefit of the doubt, but I do -- I might be wrong or right,
 5 whatever, but I do expect a higher standard from them, sorry.
 6 MS. HANDLEY: Okay. No that's fine, don't make
 7 any apology.
 8 Your Honor, we have an agreement.
 9 Ms. Maxwell, thank you for your time, you haven't said
 10 anything wrong, you are free to go.
 11 (Prospective juror retired from the courtroom.)
 12 (Pause in the proceedings.)
 13 (Prospective juror entered the courtroom.)
 14 THE COURT: You may be seated.
 15 Good afternoon, Ms. Trammell. How are you doing?
 16 PROSPECTIVE JUROR: I'm great.
 17 THE COURT: We kept you waiting a little longer.
 18 Sometimes we can gauge how long interviews are going to be,
 19 sometimes they run a little longer than we expect. We
 20 appreciate your patience.
 21 The attorneys have some additional questions concerning
 22 your qualifications as a juror in this case. There aren't any
 23 right or wrong answers, they are trying to see how you feel
 24 about certain things?
 25 PROSPECTIVE JUROR: All right.

1 THE COURT: And Ms. Handley.
 2 MR. MCCALLUM: May it please the Court?
 3
 4 MARCELLE TRAMMELL
 5 was called as a prospective juror, after having been
 6 previously sworn by the Court, testified under oath as
 7 follows:

8 VOIR DIRE EXAMINATION
 9 BY MR. MCCALLUM:

10 Good afternoon, Ms. Trammell. My name is Marshall
 11 McCallum. I am an Assistant District Attorney. And I work
 12 along with Andrea Handley, she is also an Assistant District
 13 Attorney. We are also responsible for the jury selection in
 14 this capital murder case. There are another prosecutor, his
 15 name is Kevin Brooks and he is going to be presenting the
 16 evidence in this case once it goes to trial. He is not in the
 17 courtroom right now.

18 Over here to my left, Karo Johnson, Paul Brauchle, they
 19 are defense attorneys here in Dallas. They represent the man
 20 accused, the man at the end of the table, Wesley Ruiz.

21 You don't know any of us, do you?

22 PROSPECTIVE JUROR: No.

23 MR. MCCALLUM: I guess you have had a long
 24 chance to look over your questionnaire back there?

25 PROSPECTIVE JUROR: Uh-huh.

1 MR. MCCALLUM: Anything you would change about
 2 it, other than what you wrote back on November 30th?
 3 PROSPECTIVE JUROR: Yes. A few things, a few
 4 things that I forgot to list. How would you like for me to go
 5 about that?
 6 MR. MCCALLUM: Go ahead, what is the first
 7 thing?
 8 PROSPECTIVE JUROR: I would say the first thing,
 9 I hadn't really thought a whole lot about the death penalty
 10 prior to filling out this questionnaire. And I guess I have
 11 thought more about it and I am probably even -- I would be
 12 more hesitant to sentence someone to the death penalty.
 13 MR. MCCALLUM: Okay. Okay. If we -- if we
 14 prove the case to you beyond a reasonable doubt, we prove to
 15 you that the death penalty is the proper punishment, do you
 16 believe that you could if in your mind you said this is the
 17 proper case for a death penalty, could you do it?
 18 PROSPECTIVE JUROR: Yes.
 19 MR. MCCALLUM: Okay, if we proved it to you?
 20 PROSPECTIVE JUROR: Yes, but it would...
 21 MR. MCCALLUM: Fair enough. We are talking
 22 about life or death here, so it should be the highest standard
 23 in the legal system. So that's right on par with where you
 24 should be.
 25 Have you since this -- since you came down

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1 November 30th, have you looked anything up on the internet,
 2 researched anything about this case?

3 PROSPECTIVE JUROR: No, I haven't.

4 MR. MCCALLUM: You haven't. We have had a
 5 couple of jurors tell us that they have. But I just want to
 6 make sure.

7 We are looking at this trial date being some time in
 8 April, probably the first or second week in April. And it
 9 would probably last five to ten days. And there is a
 10 possibility that the jury could be sequestered one, possibly
 11 two nights. Is that okay with you? Would you be able to work
 12 that into your schedule?

13 PROSPECTIVE JUROR: I just wanted to check my
 14 calendar real quickly, yeah, not a problem.

15 MR. MCCALLUM: Okay. Ms. Trammell we called
 16 you down here because basically from your questionnaire, you
 17 are kind of middle of the road and that's kind of what we are
 18 looking for. We have looked at about a thousand
 19 questionnaires, and there are a lot of people who are one
 20 extreme or the other. And basically, we decided just to bring
 21 down the people who are kind of in the middle, could go either
 22 way, that's why you are down here and talking to us today.
 23 And your views are kind of on par with what the law is in
 24 Texas. You can't get the death penalty in every murder case.
 25 If I pulled a gun out and blew Ms. Handley brains out and

1 I laughed in the courtroom about what I did, it would be a
 2 horrific murder; would you agree with that?

3 PROSPECTIVE JUROR: I agree.

4 MR. MCCALLUM: It would not, however, qualify
 5 for the death penalty. She is not the type or class that is
 6 protected by the legislature. The type cases where the death
 7 penalty can be applied are the murder of a police officer
 8 while he was acting as a police officer, murder of a child
 9 under the age of six. The most common scenario that we see is
 10 someone goes in a convenience store to rob the convenience
 11 store. While in the course of committing robbery, they commit
 12 a murder, that's a capital murder. That's a death penalty.

13 If I go out and hire a hit man to kill someone, the hit
 14 man does the hit, both myself and the hit man can be tried for
 15 capital murder. So there is very specific type of cases where
 16 you can get the death penalty, and not all of them -- not
 17 every murder case obviously qualifies.

18 I am going to do a lot of talking just to let you know.
 19 We are laying our cards out on the table up front. We believe
 20 as the State of Texas that we have the type of case that is
 21 going to convince a jury that, number one, that Mr. Ruiz is
 22 guilty of capital murder; and two, that the appropriate
 23 punishment in this case is going to be the death penalty as
 24 opposed to life imprisonment. That's what we believe. Now
 25 that and a dollar fifty will get you a cup of coffee

1 downstairs.

2 Now, the Defense obviously have a totally different view.
 3 We want to lay our cards out on the table. We don't want
 4 people coming back -- you will find out today whether or not
 5 you are going to be on this jury. We don't want people coming
 6 back April 5th or whenever we are going to start the trial
 7 saying, Wow, the State really was serious about the death
 8 penalty. We are. And I think you have already answered the
 9 question, if we prove the case to you beyond a reasonable
 10 doubt that that was the appropriate thing to do, you can do
 11 that; is that correct?

12 PROSPECTIVE JUROR: You talk to me a little bit
 13 more about if the -- if it is determined to be a capital
 14 murder and does the jury have any part in deciding whether it
 15 is death penalty or life imprisonment.

16 MR. MCCALLUM: The jury has all the
 17 decision-making power in terms of guilt/innocence and at the
 18 punishment phase. The jury and the 12 jurors alone will
 19 decide whether or not the defendant receives the death penalty
 20 or life imprisonment without parole. So the Judge will have
 21 no say -- no outside source will have any say, it will be up
 22 to the 12 jurors who are sitting on the case. And you know,
 23 we don't -- let me tell you what will happen in this case,
 24 basically if we -- have you ever sat on a jury before?

25 PROSPECTIVE JUROR: No, I haven't.

1 MR. MCCALLUM: In any case -- okay. Let me just
 2 tell you a little bit how it works, okay. Right now, we are
 3 doing the first phase and that's called the jury selection,
 4 voir dire. And the second part of the trial is
 5 guilt/innocence. And basically you look to the State, we have
 6 to prove each and every element to you beyond a reasonable
 7 doubt in the indictment. And if you look up there, I think
 8 there is a half page piece of paper up there?

9 PROSPECTIVE JUROR: Uh-huh.
 10 MR. MCCALLUM: You just take a minute to read
 11 that. Basically what that says is, on or about a certain
 12 date, in the County of Dallas, State of Texas, the defendant,
 13 Wesley Ruiz, caused the death of a police officer, Mark Nix,
 14 while Mark Nix was in his duties as a police officer.
 15 Basically that's what we have to prove to you beyond a
 16 reasonable doubt. And it is not four out of six, five out of
 17 six, we have to prove each and every element to you beyond a
 18 reasonable doubt. And let me just by way of example, let me
 19 use a hypothetical.
 20 If I prove to you that the defendant did cause the death
 21 by shooting the police officer with a firearm while the police
 22 officer was acting in his duties as a police officer, but I
 23 don't prove to you Dallas County, I prove to you that happened
 24 up in Collin County, well, obviously one of the essential
 25 elements in the indictment which is Dallas County has not been

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1 proven. In fact I have proven Collin County. And in that
 2 case, the Judge would give you instructions, he would instruct
 3 you that in that case you would have to find the defendant not
 4 guilty. Could you -- I mean although it would probably make
 5 you sick to let a person who murdered a police officer go, it
 6 would probably make you sick, but could you follow the law and
 7 the Judge's instructions and find the defendant not guilty in
 8 that case?

9 PROSPECTIVE JUROR: Yes.

10 MR. MCCALLUM: You would have to. I mean we
 11 would be looking for jobs the next day. I am sure we would
 12 get paraded in the newspaper and we would probably never work
 13 as prosecutors again. We just use that as an example. You
 14 look to the State for proving, you don't look to the defense
 15 for anything. The Defense can sit over there and work
 16 crossword puzzled the whole time, they have no burden
 17 whatsoever. All the evidence presented in the trial that
 18 proves the defendant's guilt come from this table. They don't
 19 have to do anything.

20 You can follow that law?

21 PROSPECTIVE JUROR: Uh-huh.

22 MR. MCCALLUM: Another thing quickly, I will go
 23 over, the defendant's right not to testify. You have probably
 24 heard that before?

25 PROSPECTIVE JUROR: Yes.

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1 MR. MCCALLUM: Fifth Amendment privilege, you
 2 don't have to be a witness in your own criminal defense.
 3 There is a myriad of reasons why the defendants don't testify.
 4 One, State hasn't met their burden beyond a reasonable doubt.
 5 Maybe the person isn't a good speaker. They are going to be
 6 cross-examined by a lawyer. Maybe they would hurt themselves
 7 more than they would help themselves. There is a myriad of
 8 reasons why somebody wouldn't testify. Could you follow that
 9 law?

10 PROSPECTIVE JUROR: Yes.

11 MR. MCCALLUM: Okay. Basically, I mean, it is
 12 like a two-act play, the first part of the trial is guilt
 13 innocence part of the trial, if we don't prove to you each and
 14 every element beyond a reasonable doubt, then everybody goes
 15 home. If we do meet our burden, it is like a two-act play.
 16 You don't know how it is going to end, there is an
 17 intermission. And you come back and that's the punishment
 18 phase. And basically the punishment phase, each side is
 19 allowed to present further evidence. We can introduce
 20 evidence possibly if the person had been to the penitentiary
 21 before. We can show the jury that he has been to the
 22 penitentiary. If he has committed other violent acts, we can
 23 show things such as that that might help the jury in making a
 24 determination as to punishment.

25 Conversely, the Defense can show you that he was a good

1 person. You know he is a deacon in the church, was always
 2 respectful of people, this was just an aberration, a one-time
 3 occurrence. They are certainly allowed to do that in the
 4 punishment phase. It's much more wide open at that stage.

5 In the first part of the trial, you are limited a lot in
 6 what you can present. In the punishment phase, a lot more
 7 things come in that the jury can consider when deciding what
 8 sort of punishment to give.

9 Now, if a person is found guilty of capital murder, okay.
 10 the way we elevate it up to a death sentence is by how the
 11 jury answers these two questions over there. They don't just,
 12 you know, hear the case, find the person guilty and then
 13 decide right on the verdict sheet death. There are these
 14 special issues and we are going to talk about them here in a
 15 minute --

16 PROSPECTIVE JUROR: Okay.

17 MR. MCCALLUM: -- that the jury has to consider.
 18 Would you just take a moment and read that first special issue
 19 to yourself?

20 PROSPECTIVE JUROR: All right.

21 MR. MCCALLUM: And basically would you agree
 22 with me that that's just asking you whether or not the
 23 defendant would be a future danger?

24 PROSPECTIVE JUROR: Yes.

25 MR. MCCALLUM: Okay. And if you will notice it

1 also says beyond a reasonable doubt. And beyond a reasonable
 2 doubt is the highest burden in the legal system.

3 If you are talking about a civil suit, you know you are
 4 suing over money in civil court, we are talking about
 5 preponderance of the evidence, just the tipping of the scale,
 6 51 percent to 49 percent, 51 percent meet your burden.

7 Clear and convincing evidence is required to
 8 institutionalize someone or take someone's kids away.

9 It is even a higher burden than preponderance of the
 10 evidence. It is up here. Here we are talking about beyond a
 11 reasonable doubt. Beyond a reasonable doubt is the highest
 12 burden in the legal system. And it applies to all criminal
 13 cases.

14 And the analogy that I like to use is the stakes start
 15 out at the bottom of the mountain holding a flag and we have
 16 to carry that flag up to the top of the mountain. If we
 17 didn't meet our burden to erase reasonable doubt, we didn't
 18 get to the top and in your mind, you have to believe that we
 19 made it up there.

20 If you notice in the first part of the trial obviously we
 21 have to prove each and every element beyond a reasonable
 22 doubt.

23 In the second part of the trial, the first special issue,
 24 we have to prove to you beyond a reasonable doubt that there
 25 is a probability. How do you deem probability when you think

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1 about probability, how would you define that?

2 PROSPECTIVE JUROR: Define probability?

3 MR. MCCALLUM: Yeah.

4 PROSPECTIVE JUROR: The likelihood.

5 MR. MCCALLUM: More likely than not?

6 PROSPECTIVE JUROR: Yeah.

7 MR. MCCALLUM: Okay. If you are watching the
 8 weather and David Finfrock said there is a possibility of rain
 9 tomorrow, well, who knows, that doesn't sound real strong.
 10 But if he says there is a probability of rain, you will
 11 probably take your umbrella?

12 PROSPECTIVE JUROR: Yes.

13 MR. MCCALLUM: Most jurors have been coming
 14 down here saying probability means more likely than not, and
 15 you agree at what?

16 PROSPECTIVE JUROR: Yes.

17 MR. MCCALLUM: Would commit criminal acts of
 18 violence, okay. If I balled up my fist and I punch
 19 Ms. Handley as hard as I could on the side of the face and
 20 knocked her down, would you consider that a criminal act of
 21 violence?

22 PROSPECTIVE JUROR: Yes.

23 MR. MCCALLUM: Okay. Some people don't. We
 24 just talked to a guy a few minutes ago, he was from intercity
 25 Pennsylvania, he said, no, I don't think it is a criminal act

1 of violence. It is what every juror believes these terms to
 2 be, there are no definitions.

3 When you go back in the first part of the trial, the
 4 Judge is going to define for you all the terms, deadly weapon,
 5 police officer. However, when you get to these special
 6 issues, it is -- there are no definitions, it is what each
 7 juror believe these terms mean. And if you notice, it doesn't
 8 say up there the defendant will commit another capital murder,
 9 will commit an aggravated sexual assault. You know it is what
 10 every juror believes to be a criminal act, okay.

11 Continuing threat to society. Would you agree with me
 12 that prison society also encompasses our society. I mean they
 13 are excluded in that they are locked up. But would you agree
 14 with me that people in the penitentiary are a part of society?

15 PROSPECTIVE JUROR: I hadn't thought about that.

16 MR. MCCALLUM: Let me ask you this, who works --

17 who is inside the penitentiary besides the inmates?

18 PROSPECTIVE JUROR: Well, you have the people

19 that are controlling them.

20 MR. MCCALLUM: Right.

21 PROSPECTIVE JUROR: The warden.

22 MR. MCCALLUM: Doctors, nurses?

23 PROSPECTIVE JUROR: Yeah.

24 MR. MCCALLUM: We have all sorts of staff?

25 PROSPECTIVE JUROR: Yeah.

1 MR. MCCALLUM: People who are free members of
 2 society?

3 PROSPECTIVE JUROR: Right.

4 MR. MCCALLUM: That have contact with these
 5 prisoners on a day-to-day basis?

6 PROSPECTIVE JUROR: Uh-huh.

7 MR. MCCALLUM: And even though it is not
 8 defined, I think the legislature contemplates that prison
 9 society is part of society. Do you believe that your
 10 distinction probably broad enough to include prison society?

11 PROSPECTIVE JUROR: I think it has just been
 12 broadened.

13 MR. MCCALLUM: I don't want to put words in your
 14 mouth, the legislature contemplates that, we just want to know
 15 if your definition will be broad enough to include that?

16 PROSPECTIVE JUROR: Puts an interesting spin to
 17 the initial interpretation.

18 MR. MCCALLUM: Okay. Yeah, it does seem like
 19 they are locked up, we are not going to ever see them again,
 20 and we won't have any contact. But the legislature does
 21 contemplates that.

22 You assume going into this on the first special issue
 23 that the answer is no, that he is not a future danger. And
 24 like I had, we have to prove to you beyond a reasonable doubt
 25 that he is going to be a continuing threat, a future danger to

1 society. And that's kind of like at the beginning of the
 2 trial in the guilt/innocence phase of the trial, he is
 3 presumed innocent. I mean there can be a hundred witnesses to
 4 someone committing an offense. We could have it on videotape,
 5 we could have it DNA evidence. But the defendant is entitled
 6 to plead not guilty and have a jury trial. And we must
 7 presume him to be not guilty until we have proven our -- until
 8 we have met that burden beyond a reasonable doubt.

9 And the same thing applies in that special issue. You
 10 have to assume that life -- a life sentence is the appropriate
 11 punishment in a capital murder case. If and only if the State
 12 meets its burden and proves that the defendant is a continuing
 13 danger to society, do you answer that question "yes".

14 Fair enough?

15 PROSPECTIVE JUROR: All right.

16 MR. MCCALLUM: Okay. Well, once the jury has --
 17 if they found that special issue one to be "yes", basically at
 18 that point the sentence -- the life sentence has been elevated
 19 up to a death sentence. Well, first off, you found the
 20 defendant guilty of a capital murder.

21 Now, secondly, you have found that he is a continuing
 22 threat to society, okay. However, basically the legislature
 23 gives you one last chance. That's what we call special issue
 24 number two, it is kind of the safety net. It kind of gives
 25 the jury one last chance to commute it back down to a life

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1 sentence. And if you just take a second to read special issue
 2 number two.

3 PROSPECTIVE JUROR: All right.

4 MR. MCCALLUM: It is very verbose and wordy. I
 5 will tell you that we didn't write any of the issues, this is
 6 the legislature. But the way we basically look at special
 7 issue number two is the person's blameworthiness. How much
 8 blame are we going to put on the person? What I mean by that
 9 is, you might have a situation where, okay, a person goes out,
 10 commits a capital murder and you find that they are a
 11 continuing threat to society, that they are dangerous. You
 12 have no doubt in your mind that they are going to continue to
 13 commit violent acts. However, you hear something, some
 14 evidence is presented at trial and some evidence you hear that
 15 the defendant was locked in a closet as a child, burned with
 16 cigarette butts, mentally abused, sexually abused, and
 17 basically the parents raised a monster. And when he became an
 18 adult he was an absolute monster and committed a capital
 19 murder. And that might mitigate in your mind, you know, he is
 20 capital murderer, he is dangerous; but in my mind, his parents
 21 should also be on trial with him. You know they are
 22 responsible for the way he turned out. That may be something
 23 that might mitigate in your mind. You know other things. And
 24 there is no burden like in the first issue, we have to prove
 25 it beyond a reasonable doubt. I mean it could be anything in

1 the second special issue, there is no burden. It could just
 2 be something that you hear during the trial. It could be
 3 something that might be brought up, chronic alcohol and drug
 4 abuse, you know, person was high at the time of the crime.
 5 Now, that might not be mitigating, it might be aggravating,
 6 some jurors may think that is aggravating to me, someone would
 7 go ingest chemicals and then go out and commit a capital
 8 murder, that is not mitigating. I am just throwing things out
 9 there.

10 We can't execute mentally retarded people. You might
 11 find that the person had a very low I.Q. They are very slow,
 12 that might be something that was mitigating. So if let's just
 13 say for example you find the defendant guilty of capital
 14 murder. You find in special issue number one that he is a
 15 continuing threat. You still believe he is dangerous to
 16 society, even though he is locked up. Yet in your mind, you
 17 hear something that is mitigating, you hear about some sort of
 18 horrific child abuse, just something in your mind that clicks
 19 and says, you know what, he is a horrible person, there is
 20 something that mitigates and I don't believe, you know the
 21 death penalty would be appropriate punishment. I could take
 22 this back down to a life sentence. Do you feel like you could
 23 keep an open mind and if that situation presented itself, you
 24 could do that?

25 PROSPECTIVE JUROR: Yes. I have to say, though,

1 I think I am still more stuck the prison being considered
 2 society, I will just be honest.
 3 MR. MCCALLUM: Okay, I mean, they still have
 4 contact with these people, correct, these people that are in
 5 jail. Who is to say that they are not going to order a hit
 6 from inside the prison on a person in the outside world?
 7 PROSPECTIVE JUROR: That's true.
 8 MR. MCCALLUM: It's things like that to
 9 consider.
 10 Any other questions that you have?
 11 I saw in your questionnaire, you might have -- what
 12 was -- there was something about an I.V.?
 13 PROSPECTIVE JUROR: Oh, my husband's fine now,
 14 he had an MRSA.
 15 MR. MCCALLUM: He was getting it twice a day?
 16 PROSPECTIVE JUROR: Yeah, the I.V. was twice a
 17 day, he is fine now, no I.V.s, back at work. Do I need to
 18 point out any other things on the questionnaire that --
 19 MR. MCCALLUM: I am about to pass you over to
 20 the Defense Attorney, I think they could probably clear those
 21 up for you at this time.
 22 PROSPECTIVE JUROR: Okay.
 23 MR. MCCALLUM: I will pass the witness at this
 24 time.
 25 MR. JOHNSON: May it please the Court?

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 2
 3 **VOIR DIRE EXAMINATION**
 4 BY MR. JOHNSON:
 5 Good afternoon, Ms. Trammell. You want to talk about
 6 whatever else is in your questionnaire. We will start there
 7 if you like.
 8 PROSPECTIVE JUROR: Oh, I just -- actually I
 9 should put on my glasses, but -- well, on page six where it is
 10 asking about spouse, family members, or close personal friends
 11 that have ever been arrested.
 12 MR. JOHNSON: Yes, ma'am.
 13 PROSPECTIVE JUROR: And since I filled this out,
 14 it was like driving home I realized, yeah, I believe my
 15 husband was arrested once long before I met him. And I found
 16 out later that my father was arrested once my sister told me
 17 this at dinner.
 18 MR. JOHNSON: Okay. Was this at dinner when
 19 y'all were discussing the death penalty?
 20 PROSPECTIVE JUROR: Yes.
 21 MR. JOHNSON: You discussed the death penalty at
 22 candle-light diners?
 23 PROSPECTIVE JUROR: Not at candle-light diner,
 24 but it was at the Mercury.
 25 MR. JOHNSON: Let me start over. My name is

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1 Karo Johnson. I represent Mr. Ruiz over here to my far left.
 2 Mr. Brauchle and I are on the defense team. Our opinion of
 3 this case is completely different from the State's opinion in
 4 this case.

5 Does that surprise you?
 6 PROSPECTIVE JUROR: Not at all.
 7 MR. JOHNSON: And you know I was kidding with
 8 you about talking about the death-penalty case at candle-light
 9 dinner, you probably have never done that, have you?
 10 PROSPECTIVE JUROR: No. As I said, it was the
 11 mercury, the lighting was dim and it was right after I had
 12 filled out this questionnaire.

13 MR. JOHNSON: Prior to coming down here and
 14 finding out that you were filling out a questionnaire on a
 15 death-penalty case, is this something that you talked about
 16 often?

17 PROSPECTIVE JUROR: No.
 18 MR. JOHNSON: And would it surprise you that
 19 most of the people that come down here and go through this
 20 interview tell us that it is not something that they talk
 21 about at their breakfast table or at dinner, it is not
 22 something that most people think about very often?
 23 PROSPECTIVE JUROR: That wouldn't surprise me.
 24 MR. JOHNSON: So this is all new to you, and we
 25 understand that. So what I am going to do now is try to

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1 explain a little bit about this process. The prosecutors
 2 basically explained most of it. I am going to just kind of go
 3 over some of the things that are more from our perspective,
 4 just kind of explain some of that to you, okay. I am going to
 5 try to do this in a reasonable amount of time. If you will
 6 just bear with me.
 7 To start with, all cases that are criminal cases have to
 8 be proven like the prosecutor told you by the State. They
 9 have the burden of proof in these cases, okay. And in Texas,
 10 we use this term proof beyond a reasonable doubt. Have you
 11 ever heard that term before you got involved in this?
 12 PROSPECTIVE JUROR: Yes, uh-huh.
 13 MR. JOHNSON: Now, some states, I think, use the
 14 term shadow of a doubt, I have heard different things in
 15 movies and things like that. In Texas we use beyond a
 16 reasonable doubt. We don't have a definition for that term.
 17 I am going to try to describe it to you by using some of the
 18 other terms that we use in our justice system to try to
 19 emphasize what it means.
 20 To start with, if you were to sue somebody in a civil
 21 court for money like a car wreck or some business deal that
 22 went bad, the person that felt like they had been harmed and
 23 brought a lawsuit, they would have to prove their case beyond
 24 a preponderance of the evidence. Now, I am going to use my
 25 hand here as kind of a scale of justice, okay. A

1 preponderance of the evidence, the person bringing the case
 2 has to tip that case over to their side from the center, just
 3 tip it over, and that's what would be required of them and
 4 that's the proof.

5 Now, you have a son, all right. And the reason I say
 6 that, is because I want to tell you a different level of
 7 proof. And it is called clear and convincing evidence. And
 8 the reason I bring up your son is, is that is the type of
 9 proof that is required for somebody to take somebody else's
 10 children away from them, okay. Now, you understand that there
 11 are situations where somebody is trying to get custody of a
 12 child or maybe terminate somebody's parental rights; you
 13 understand we have courts for those types of issues. Now, in
 14 those courts, the person who is trying to accomplish taking
 15 somebody's children away from them, have to bring enough
 16 evidence and proof to convince the trier of fact, the Judge or
 17 jury, they have to convince that judge or jury with evidence
 18 that proves, what, clear and convincing evidence that that is
 19 what needs to be done, okay.

20 Now back to my scale, okay. You got preponderance of the
 21 evidence and then the next one is clear and convincing
 22 evidence.

23 Now, let me just ask you this, don't you think in some
 24 situations where somebody is trying to take somebody's
 25 children away from them, that that would -- would you agree

1 with me that that would take some pretty substantial evidence
 2 and proof to do that?

3 PROSPECTIVE JUROR: Yes.
 4 MR. JOHNSON: Okay. And so my point is, I am
 5 trying to distinguish the different levels of proof that we
 6 have in our justice system, okay.

7 Now, the next highest level of proof that we have is
 8 proof beyond all reasonable doubt. And that's what the proof
 9 is required in a criminal case. As you can see, the scale has
 10 gone from being tipped over with preponderance of the
 11 evidence, further over for clear and convincing. And then
 12 beyond a reasonable doubt the scale is tipped as far as it has
 13 to be tipped in our justice system okay.

14 The example that Marshall gave you about them having a
 15 flag, now that's basically what they have got to do. They
 16 have got to get that flag up to the top for them to be able to
 17 prove their case. The burden is on them, okay. The Defense
 18 has no burden of proof at all. We don't have to bring you any
 19 evidence on anything in a criminal case. I am not saying that
 20 we won't, but we don't have to. I am not saying that we will,
 21 okay.

22 Are you comfortable with that?

23 PROSPECTIVE JUROR: Uh-huh.
 24 MR. JOHNSON: Now, every element in that
 25 indictment that is in front of you, each of those elements,

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1 there may be a definition of each of the things that is
 2 involved in that indictment, at the end of the evidence, the
 3 Court, the Judge will give you this document, if you are on
 4 this jury that y'all will take back in the jury room with you
 5 for your deliberations that is called the charge of the Court.
 6 And that document will have the law that contains the issues
 7 involved in a particular trial, okay. That document will have
 8 some definitions in it of some of the terms that are in that
 9 indictment, okay. Now, each of those elements has to be
 10 proven beyond all reasonable doubt.

11 If the State fails to prove any element beyond all
 12 reasonable doubt, what does the jury do in that situation?

13 PROSPECTIVE JUROR: Well, if they have proven
 14 beyond a reasonable doubt that everything is accurate there,
 15 then it would be a conviction of guilty.

16 MR. JOHNSON: That's right. And my question was
 17 if they don't do that?

18 PROSPECTIVE JUROR: Oh, if they don't do it, it
 19 would be not guilty.

20 MR. JOHNSON: It would be the opposite. All
 21 right. Is that something that you think you could do in a
 22 case like this, if they don't prove their case?

23 PROSPECTIVE JUROR: Yes.

24 MR. JOHNSON: Now, there are -- there are
 25 different kinds of homicides, okay. Homicide just means a

1 death. You know if a death is accidental and there was no
 2 mens rea of criminal intent involved, it was just an accident,
 3 then that is not a crime, okay. There are also homicides that
 4 are excused homicides. An example of that would be if
 5 somebody is insane, they didn't know the difference between
 6 right or wrong, then they could be found not guilty by reason
 7 of insanity; you understand that?

8 PROSPECTIVE JUROR: Yes.
 9 MR. JOHNSON: That would be an example of what
 10 is called an excused homicide, okay.

11 Now, there is also homicides that can be justified.
 12 Okay. Now, a justified homicide is a situation where somebody
 13 is killed by somebody who is acting in self-defense.

14 You have heard the term self-defense?

15 PROSPECTIVE JUROR: Uh-huh.

16 MR. JOHNSON: How do you feel about the issue as
 17 far as self-defense? Is that something that you think is a
 18 legitimate legal issue?

19 PROSPECTIVE JUROR: Absolutely.

20 MR. JOHNSON: Let me explain self-defense to you
 21 a little bit. In a case like this, even though -- in a case,
 22 not particular case, but in any case, a person who thinks that
 23 they are being threatened, has the right to defend themselves
 24 if that is a reasonable thought on their part. If they have a
 25 reasonable belief that somebody is threatening them with some

1 type of force, they have the right to defend themselves from
2 that force.

3 You follow me so far?

4 PROSPECTIVE JUROR: Uh-huh.

5 MR. JOHNSON: Now, that applies even if the
6 person who is threatening the force is a police officer, okay?

7 PROSPECTIVE JUROR: I didn't realize that.

8 MR. JOHNSON: Yeah, a lot of people don't
9 realize that. But if it appears from the person being
10 threatened with this force, if they have the reasonable belief
11 that the force is being used by this police officer is
12 unreasonable and excessive, they have the right to defend
13 themselves from that force, okay. That's the law in Texas.
14 All right.

15 Now, the law also says that the trier of fact, the person
16 that is trying to decide if this is self-defense, they view
17 the actions from the point of the view -- point of view of the
18 person who is being attacked, the person who is defending
19 themselves.

20 You understand what I mean by that?

21 PROSPECTIVE JUROR: Yes.

22 MR. JOHNSON: Okay. Now, another thing you need
23 to know about self-defense, is if that issue is raised by the
24 evidence, then -- then the State again has the burden of
25 proofing that it was not self-defense. Okay?

1 PROSPECTIVE JUROR: All right.

2 MR. JOHNSON: And that again is the law in
3 Texas. And these people would be objecting right now if that
4 wasn't the law in Texas I assure you. That is the law in
5 Texas.

6 Like some people, you were a little surprised that that
7 would apply to police officers?

8 PROSPECTIVE JUROR: Uh-huh.

9 MR. JOHNSON: And that's understandable that you
10 would be surprised, but that is the law in Texas.

11 Now, that can be raised by the evidence that the State
12 puts on, the issue of self-defense that is, that can actually
13 be raised by their own evidence. And if it is raised, then
14 again, the State would have to prove beyond a reasonable doubt
15 that it wasn't self-defense, okay.

16 Now, what do you think happens if a person acts in
17 self-defense, what would be the verdict if the Judge or jury
18 decided that the person acting in self-defense, do you know
19 what the verdict would be in a case like that?

20 PROSPECTIVE JUROR: I guess it would be not
21 guilty.

22 MR. JOHNSON: That's right. Because that would
23 be, even if it is -- our laws say if you are being threatened
24 with force, that could cause death or serious bodily injury,
25 then you would have the right to respond with what is called

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1 deadly force, which could also cause somebody's death, okay?

2 PROSPECTIVE JUROR: Uh-huh.

3 MR. JOHNSON: And in that situation, if the jury
4 decided that the facts supported that, and you are right, the
5 verdict would be not guilty in that case, is that something
6 you think you could do if you were on this jury and you
7 thought that's what the evidence showed?

8 PROSPECTIVE JUROR: I guess so.

9 MR. JOHNSON: Well, it is kind of a yes-or-no
10 deal, that's the law, do you think you could follow that law?

11 PROSPECTIVE JUROR: Yes.

12 MR. BRAUCHLE: Now, let's go over here to these
13 two issues, okay, we actually refer to them as special issue
14 number one and special issue number two. They are really not
15 numbered. The shorter one we will call special issue number
16 one just for making it easier to talk about, okay. Now, you
17 have already looked at that special issue, you have talked
18 about it some. You understand what it -- you have read it, so
19 you understand what it says; is that right?

20 PROSPECTIVE JUROR: Yes.

21 MR. JOHNSON: What you need to know is, is that
22 you get to that issue after you have -- if you get to the
23 point where you have found somebody guilty of capital murder,
24 then the punishment phase is involving these issues, okay.

25 Now, that first special issue, starts off being answered

1 "no". I mean our laws says that that starts off answered
2 "no". And the State again has that burden, the burden to
3 proof that issue beyond all reasonable doubt.

4 You understand that?

5 PROSPECTIVE JUROR: Yes.

6 MR. JOHNSON: Now, basically what that is saying
7 is, is that under our scheme, under our law, because that
8 starts off as a "no", if that is answered "no", then that
9 would be the end of the trial, at that point. The person who
10 had been found guilty of this capital murder, who had been
11 sentenced at that point, even though he hadn't been formally
12 sentenced at that point, that person would be already found to
13 have a punishment of life without parole, okay. There would
14 never be a parole, that person would never leave prison.

15 You understand that?

16 PROSPECTIVE JUROR: Yes.

17 MR. JOHNSON: The way our law is set up, with
18 that being answered "no", our law basically favors a life
19 sentence without parole rather than a death sentence. You
20 understand why I am saying that, because that starts off as
21 "no"?

22 PROSPECTIVE JUROR: Uh-huh.

23 MR. BRAUCHLE: And again they have the burden of
24 proof to get that from a life sentence without parole if they
25 can bring you evidence that would convince you to answer that

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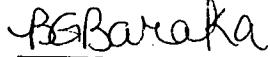
1 "yes", then that's when it becomes a death penalty, okay?
2 PROSPECTIVE JUROR: All right.
3 MR. JOHNSON: Follow that?
4 PROSPECTIVE JUROR: Uh-huh.
5 MR. JOHNSON: You have any questions about
6 anything I have talked to you about?
7 PROSPECTIVE JUROR: No, not at this point.
8 MR. BRAUCHLE: That's all my questions. Thank
9 you for your time.
10 THE COURT: You may step down, ma'am.
11 PROSPECTIVE JUROR: All right.
12 (Prospective juror retired from the courtroom.)
13 THE COURT: Is there an agreement.
14 MR. BRAUCHLE: No, there is not.
15 MS. HANDLEY: The State would use a peremptory
16 challenge on Marcelle Trammell, Juror No. 2375-B.
17 (Prospective juror entered the courtroom.)
18 THE COURT: Ms. Trammell, you have been excused
19 as a juror in this case, so you are free to go. Thank you
20 very much.
21 PROSPECTIVE JUROR: Thank you.
22 (Prospective juror retired from the courtroom.)
23 (Court recessed for the day.)
24
25

1 THE STATE of TEXAS)
2 COUNTY of DALLAS)
3 I, BELINDA G. BARAKA, Official Court Reporter in and
4 for the 194th Judicial District Court of Dallas County, State
5 of Texas, do hereby certify that the foregoing contains a true
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10 which occurred in open court or in chambers and were reported
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12 I further certify that this Reporter's Record of the
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15 I further certify that the total cost for the
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17 State/Defense.

18 WITNESS MY OFFICIAL HAND this the 30th day of
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